



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Tony M. Pearce
Application No.: 09/843,413
Filed: April 25, 2001
For: Contourable Inflatable Orthopedic Pillow
Examiner: Thomas Y. Ho
Group Art Unit: 3677
Attorney Docket: 03886.032 / 5066 P

United States Patent and Trademark Office
Commissioner for Patents
Mail Stop AF
P.O. Box 1450
Alexandria, VA 22313-1450

#14
Declaration
10-16-03
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DECLARATION OF TONY M. PEARCE

I, Tony M. Pearce, hereby declare that:

Background

1. I am at least 18 years of age.
2. I am the inventor of United States Patent Application Serial No. 09/843,413 (the “‘413 Application”), filed April 25, 2001.
3. I am employed by EdiZONE, LC (“EdiZONE”) in the position of president and LC manager.
4. EdiZONE is the owner of the ‘413 Application.

The Licenses

5. EdiZONE has licensed the technology as claimed in the '413 Application to the following companies: Advanced Comfort Technologies, Pacific Wave, Sleep Innovations (the "Agreements"). Copies of the executed Agreements are attached hereto as Exhibit "A."
6. To date, those Agreements have generated revenues for EdiZONE in the amount of \$ 650,000.00 (in cash and value of company stock provided in lieu of cash).

Respect for the '393 Patent in the Field

7. EdiZONE and I have substantial experience in the field of cushioning and we consider this invention to be a commercial success.
8. My personal experience in the cushioning ~~field~~ spans 11 years.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application of any patent issued thereon.

Dated:

10/1/03

Signed:

Jon Mearce



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors: Tony M. Pearce
Title: Contourable Inflatable Orthopedic Pillow
Filed: April 25, 2001
Serial No.: 09/843,413
Docket: 03886.032/5066 P
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Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

Certificate of Mailing

Honorable Commissioner:

I hereby certify that the attached Declaration of Tony M. Pearce is being submitted via First Class Mail with the United States Postal Service in an envelope with sufficient postage on October 2, 2003, the envelope being addressed to: Commissioner for Patents, P. O. Box 1450, Alexandria, Virginia 22313,1450.

Respectfully submitted this 2nd day of October, 2003.

Daniel McCarthy
Reg. No. 36,600
Parsons, Behle & Latimer
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File: Sleep Innovations

Pillow + Overlay
License

Agreement

This license agreement ("Agreement") is entered into this 6TH day of November, 2002 and is by and between the following Parties:

LICENSOR: EdiZONE, LC
a Utah limited liability company
1250 So. Watkins Lane
Alpine, UT 84004
TEL: (801) 785-2767
FAX: (801) 785-2611

LICENSEE: Sleep Innovations, Inc.
a New Jersey Corporation
187 Route 35, Suite 201
West Long Branch, NJ 07764
TEL: (732) 263-0800
FAX: (732) 263-0939

Recitals

WHEREAS, Licensor is the owner of certain Technology Rights and Trademark Rights (as defined in Paragraphs 1.1 and 1.2 below);

WHEREAS, Licensee wishes to obtain a license of the Technology Rights and the Trademark Rights on the terms and conditions set forth herein;

WHEREAS, Licensor desires to grant a license of the Technology Rights and the Trademark Rights to Licensee only on the terms and conditions set forth herein;

NOW, THEREFORE, the Parties agree as follows:

SECTION 1. - DEFINITIONS

1.1 Technology Rights. The following terms shall each have their respective defined meanings:

(a) Gelastic. The term "Gelastic" shall mean technology related to a particular elastomer gel owned by Licensor, including the gel itself, formulations for making the gel, methods for making the gel, products made from the gel and methods for making products from the gel as defined by U.S. Patent 5,994,450. Gelastic shall not be construed to mean "Goooz", which is a slow-rebound elastomer. Gelastic is included in the Licenses of this Agreement only insofar as its use in making Intelli-Gel, and nowhere in this Agreement shall non-Intelli-Gel applications of Gelastic be construed to be included in any License.

(b) Intelli-Gel™. The term "Intelli-Gel", which is sometimes also referred to

Gellycomb™", shall mean technology related to a cushioning structure owned by Licensor and made from elastomeric gel materials only as defined in this paragraph and having hollow buckling columns, including cushioning devices which incorporate the structure in any column structure pattern, products which incorporate the structure in any column structure pattern, and methods for making products which incorporate the structure in any column structure pattern as defined by U.S. patents 5,749,111 and 6,026,527. For purposes of this paragraph and by way of limitation of the License granted hereunder, elastomeric gel materials include Gelastic or other elastomeric gels which have substantially the same properties, but specifically excludes Goooz, foamed gels, gel-coated foams, or gel-coated objects (whether the gel coating is Gelastic or otherwise).

(c) Adjustable Shape Pillow. The term "Adjustable Shape Pillow" shall mean technology related to a bladder-containing pillow wherein the shape of the pillow is modified by means of adjusting the amount of air within a bladder contained within the pillow, including products which incorporate this technology, as defined in Licensor's pending U.S. patent application serial number 60/199,587 filed April 18, 2000. Adjustable Shape Pillow is included in the Licenses of this Agreement only insofar as its use in Intelli-Gel pillows, and nowhere in this Agreement shall non-Intelli-Gel applications of Adjustable Shape Pillow be construed to be included in any License. The Parties acknowledge that some of the features of the bladders used in the current Intelli-Gel Pillow are the proprietary property of the maker of those bladders (Dielectrics Industries) and not of Licensor.

(d) Trade Secrets. The Parties specifically acknowledge that Gelastic, Intelli-Gel and Adjustable Shape Pillow are held by and are protected by Licensor as trade secrets as defined in Utah Code Annotated § 13-24-1 *et seq.* The subject matter so held by Licensor is referred to herein as the "Trade Secrets."

(e) Know-How. "Know-How" shall mean information related to manufacturing, production and commercialization of Gelastic, Intelli-Gel and Adjustable Shape Pillow.

(f) United States Patent Rights. "United States Patent Rights" shall mean the applicable parts of one or more United States patent applications which Licensor has filed or may file in its efforts to secure United States patent protection for Gelastic, Intelli-Gel and Adjustable Shape Pillow and any and all issued patents, reissue patents, reexamined patents and corrected patents based on any of them.

(g) Foreign Patent Rights. "Foreign Patent Rights" shall mean the applicable parts of any and all foreign national patent applications which Licensor may file in its efforts to secure foreign patent protection for Gelastic, Intelli-Gel or Adjustable Shape Pillow, and any and all issued patents, reissue patents, reexamined patents and corrected patents based on any of them.

(h) Patent Rights. "Patent Rights" shall mean United States Patent Rights and Foreign Patent Rights collectively.

(i) Technology Rights. "Technology Rights" shall mean Gelastic, Intelli-Gel, Adjustable Shape Pillow, the Trade Secrets, Know-How and Patent Rights, collectively.

1.2 Trademark Rights. "Trademark Rights" shall mean all U.S. common law, federal and state trademark and service mark rights and all foreign trademark and service mark rights to the marks "GELASTIC", "INTELLI-GEL" and all variations of them which may be used to designate the source or

origin of Gelastic products and services or Intelli-Gel products and services. No rights are granted by Licensor to Licensee relating to the "ORTHOJUST" mark.

1.3 Information. During the performance of the terms of this Agreement, Licensee will learn highly sensitive, proprietary information owned by Licensor. The information may include inventions, trade secrets, information concerning or relating to Gelastic, Intelli-Gel or Adjustable Shape Pillow, designs, patent applications, formulas, processes, recipes, equipment, prototypes, models, mock-ups, samples, materials, manufacturing methods, business plans, marketing information, customer lists, forecasts and the like ("Information").

1.4 Confidential Information and Confidential Materials. "Confidential Information" means any and all information disclosed by Licensor to Licensee. "Confidential Materials" means any tangible medium (paper, film, magnetic media, actual models, mock-ups, materials, samples, prototypes, etc.) containing or fabricated using Confidential Information. Confidential Information shall not include any information which (i) was in the public domain prior to the execution of this Agreement, or (ii) was already known by the Receiving Party, provided that this Paragraph 1.4(ii) is only applicable if within ten (10) days of disclosure of any Confidential Information of which the Receiving Party claims prior knowledge, the Receiving Party both notifies the providing Party in writing of such prior knowledge and provides the providing Party with documentary evidence showing such prior knowledge.

1.5 Geographic Region. The term "Geographic Region" shall mean the fifty states of the United States of America, Puerto Rico, Mexico and Canada.

1.6 Licensed Field of Use.

(a) "Licensed Field of Use" shall mean consumer overlays for use atop a consumer mattress and bed head pillows sold through non-medical-specialty consumer marketing and distribution channels, including but not limited to retail stores other than medical product specialty stores, the Internet, catalogs distributed generally to consumers, television shopping channels, short-form and long-form infomercials, direct mail to consumers, and magazines other than medical industry trade magazines. It is acceptable to make medical claims about the products, and to have doctors and chiropractors recommend that patients purchase an overlay or pillow, so long as the overlay or pillow is not sold in medical specialty channels as described in paragraph 1.6(b) of this Agreement.

(b) The following product areas are specifically excluded from the Licensed Field of Use, though this is not an indication of all excluded products: (i) Mattresses, mattress overlays and pillows for medical beds (acute care, long term care, and home health care), operating tables, stretchers and gurneys; positioning and heating or cooling pads for surgery; and medical devices intended for relief or reduction of pressure and shear on tissue while lying down or while sitting in a medical bed (e.g., heel protectors) including human and veterinary products; (ii) all wheelchair related products or products intended primarily for sitting; (iii) all products distributed through medical channels ("medical channels" shall mean the following: chiropractors, therapists, physicians, other health care professionals, DME dealers, specialty medical dealers, general line medical distributors, medical products catalogs and direct sales to medical care facilities including but not limited to hospitals and nursing homes); and (iv) consumer mattresses.

1.7 Reserved Fields of Use. "Reserved Fields of Use" shall mean all fields of use not expressly recited in the Licensed Field of Use.

1.8 Licensed Product. "Licensed Product" shall mean any product or service which embodies or is made using Gelastic, Intelli-Gel or Adjustable Shape Pillow and which subsists within the Licensed Field of Use.

1.9 Customer. "Customer" shall be any third party that acquires possession of a Licensed Product from Licensee directly or indirectly (whether by purchase, rental, lease or otherwise), or receives a service performed by Licensee using a Licensed Product.

1.10 Net Sales. For any particular article of Licensed Product sold, rented or leased, "Net Sales" shall mean the actual sales, rental or lease price of the Licensed Product charged by Licensee or its customers at the wholesale level (the level just prior to retail) or at the retail level if sold by Licensee at retail, in a bona fide transaction with a third party, as per invoices covering such sales, rentals or leases, less deductions for all customary discounts, returns, allowances, rebates and actual non-reimbursed shipping costs applicable to sales. If Licensee exchanges Licensed Products for valuable consideration other than cash, including an exchange for services, "Net Sales" shall be the fair market value of such consideration.

SECTION 2. - THE LICENSES

2.1 Technology License. Subject to and on the terms and conditions contained herein, especially but not limited to the Reserved Technology License of Paragraph 2.2 below, Licensor hereby grants to Licensee, and Licensee hereby accepts, an exclusive (as further modified in this paragraph) license of the Technology Rights to make, use, and sell Licensed Products in the Geographic Region. This license is referred to in this Agreement as the "Technology License." To the extent that the Technology License terminates or is terminated for a particular market, jurisdiction or country under this Agreement, Licensee shall not make, use or sell any Licensed Product in such country or region in which the License terminates or is terminated, and Licensor shall be permitted to market and sell or license the Technology Rights, and to manufacture, market and sell products using the Technology Rights to third parties in such country or region. Licensee shall not make, use or sell any Licensed Product outside the Geographic Region. The exclusivity of the Technology License shall apply to marketing and selling in full, and to manufacturing except as described in the next sentence. In the event that Licensor or its third party licensee desires to have products which are described by the Technology Rights manufactured in whole or in part within the Geographic Region for marketing and sales outside the Geographic Region, Licensor or its third part licensee shall have the right to do so provided the manufacturer agrees in writing that the product will not be made for any purposes which violate this Agreement. In the event that the Licensee desires to have Licensed Product manufactured in whole or in part in an area outside the Geographic Region, Licensee shall have the right to do so with the written permission of Licensor, which shall not be unreasonably withheld. Licensor hereby grants permission for Licensee to have Licensed Products manufactured in whole or in part in China. The Technology License shall be exclusive for all markets except the following, which shall be non-exclusive: (i) stores directly affiliated with Advanced Comfort Technology, Inc. or with Licensor; (ii) internet websites directly affiliated with Advanced Comfort Technology, Inc. or with Licensor; (iii) short-form or long-form infomercials by Advanced Comfort Technology, Inc. or Licensor or their affiliates, successors or assigns; and (iv) direct-

to-consumer mail marketing by Advanced Comfort Technology, Inc. or Licensor or their affiliates, successors or assigns. For purposes of this paragraph, "directly affiliated" stores or internet websites shall include but not be limited to stores or internet websites which are majority owned, operated, or licensed by Licensor or its successors or assigns or by Advanced Comfort Technology, Inc. or its successors or assigns.

2.2 Reserved Technology License. Licensor reserves for itself the right to make and use Licensed Product for the purposes of Licensor's further testing and development of Gelastic, Intelli-Gel and Adjustable Shape Pillow. Licensor also reserves for itself the right to engage in any activities whatsoever with respect to Gelastic, Intelli-Gel and Adjustable Shape Pillow in the Reserved Fields of Use. This is collectively referred to in this Agreement as the "Reserved Technology License." Notwithstanding the Reserved Technology License, Licensor shall have no obligation to further test, develop or improve Gelastic, Intelli-Gel and Adjustable Shape Pillow.

2.3 Trademark License. Subject to and on the terms and conditions contained herein, especially but not limited to the Reserved Trademark License of Paragraph 2.4 below, Licensor hereby grants to Licensee, and Licensee hereby accepts, a non-exclusive license of the Trademark Rights for the limited purpose of designating the source or origin of Licensed Products and services performed using Licensed Products. This is referred to in this Agreement as the "Trademark License."

2.4 Reserved Trademark License. Licensor reserves for itself the right to exploit the Trademark Rights in any manner that is not in direct conflict with the Trademark License.

2.5 The License. As used herein, "License" shall mean the Technology License and the Trademark License collectively.

2.6 No Sublicense without Consent. Licensor has specifically chosen Licensee to commercialize Gelastic, Intelli-Gel and Adjustable Shape Pillow in the Field of Use because of Licensor's belief in Licensee's technical abilities, managerial efficiency, marketing expertise and high standards of business ethics. Accordingly, Licensee shall not, and Licensee has neither the right nor the power to, grant any sublicense under the License to any third party with the exception of wholly owned subsidiaries of Licensee without the advance written consent of Licensor. No party other than Licensee and its wholly owned subsidiaries has the right to exploit the License or any portion thereof. A subcontract for the manufacture of Licensed Products shall not be construed to be a sublicense.

2.7 Reservations. Rights not expressly granted to Licensee under this Agreement or the License are reserved by Licensor. No part of this Agreement shall be interpreted to prevent Licensor from engaging in any activities that do not directly conflict with any obligation of Licensor under this Agreement.

SECTION 3 - TECHNOLOGY RIGHTS AND CONSULTATION

3.1 Gelastic, Intelli-Gel and Adjustable Shape Pillow Formulations and Processes. Not later than ten (10) business days after Licensee's payment of the Royalty Advance (defined in Paragraph 4.1 below) to Licensor and Licensee's written request for formulations and processes, Licensor shall provide Licensee with the formulations of Gelastic and the manufacturing processes for Gelastic, Intelli-Gel and Adjustable Shape Pillow which Licensor believes to be best suited for the Licensed Products. From time

to time, at Licensor's own initiative or at Licensee's request, Licensor shall provide Licensee with updates concerning Gelastic formulations and manufacturing processes for Gelastic, Intelli-Gel and Adjustable Shape Pillow to the extent the Gelastic, Intelli-Gel and Adjustable Shape Pillow formulations or processes have been improved. Licensee shall only use Gelastic and other gel formulations provided or approved by Licensor in Licensee's Intelli-Gel products.

3.2 Questions and Consultation. Licensee may contact Licensor from time to time with questions about Gelastic, Intelli-Gel and Adjustable Shape Pillow and Licensor shall attempt to answer those questions. However, if Licensee wishes for Licensor to engage in any research, development, testing or evaluation work concerning Gelastic, Intelli-Gel or Adjustable Shape Pillow, Licensee may propose a project to Licensor and Licensor shall respond to Licensee's proposal as Licensor sees fit in a timely manner.

SECTION 4 - CONSIDERATION

4.1 Royalty Advance. In consideration for grant of the License, Licensee shall pay to Licensor a Royalty Advance of twelve thousand five hundred dollars (\$12,500), payable by bank wire within five (5) calendar days of the Effective Date of this Agreement. The entire Royalty Advance shall be deemed earned when paid and shall be completely non-refundable. The Royalty Advance shall be credited to Licensee only by means of subtracting twenty five percent (25%) from each Royalty payment or Minimum Royalty payment until the total of the subtractions equals twelve thousand five hundred dollars (\$12,500). The License shall only take effect upon Licensor's timely receipt of the Royalty Advance. Prior to nine months after the Effective Date of this Agreement, Licensee shall pay to Licensor an Additional Royalty Advance of the difference between twenty-five thousand dollars (\$25,000) and the sum of the Royalty Advance and actual further Royalties paid to that date. If actual further Royalties paid to that date exceeds twelve thousand five hundred dollars (\$12,500), the Additional Royalty Advance shall be zero dollars (\$0). For example, if in addition to the twelve thousand five hundred dollar \$12,500 Royalty Advance, Licensee has by nine months from the Effective Date of this Agreement paid five thousand dollars (\$5,000) in royalties to Licensor, the Additional Royalty Advance shall be seven thousand five hundred dollars (\$7,500). The License shall not continue in effect after the nine months from the Effective Date if the Additional Royalty Advance is not timely paid. The Additional Royalty Advance shall be credited to Licensee only by means of subtracting up to twenty five percent (25%) from each Royalty payment or Minimum Royalty payment until the total of the subtractions equals the Licensee-paid amount of the Additional Royalty Advance. For any given calendar quarter, the sum of such subtractions for repayment of the Royalty Advance and the Additional Royalty Advance shall not exceed twenty five percent (25%) of that quarter's Royalty payment or Minimum Royalty payment.

4.2 Royalty. Licensee shall pay to Licensor a "Royalty" equal to five percent (5.00%) of the Net Sales of each Licensed Product sold, rented, leased, or otherwise transferred or used during the Term of the License. The triggering event for the payment of the Royalty shall be the earliest of shipment of a Licensed Product by Licensee, the performance of a service using a Licensed Product, preparation of an invoice related to a Licensed Product or an associated service, or use or transfer of a Licensed Product.

4.3 Royalty Reduction. The License includes a complete package of potentially valuable technical information and legal rights for which Licensee is ready, willing and able to pay the Royalty

Advance, the Royalty, and other payments and consideration due under this Agreement. Licensee and Licensors have considered, that at some point in time, there may cease to be patent claims or pending patent claims anywhere in the world that cover the Technology Rights or any portion of any of them. In that event, Licensors and Licensee agree that a Royalty should still be payable for the Technology Rights, but that a reduction in Royalty may be appropriate. Accordingly, the Royalty shall be reduced by 0.25% (to 4.75%) for all Royalties which accrue during any calendar quarter in which no patent claim or pending patent claim covers the Technology Rights or any portion of either of them for the entire calendar quarter.

4.4 Grant Back License of Improvements. In further consideration for the License, Licensee agrees to grant a non-exclusive license (the "Grant Back License") to Licensors of all improvements, modifications, extensions and applications of the Technology Rights and any portion thereof conceived, owned or licensed by Licensee, its successors, assigns, employees and contractors, etc. during the Term of this Agreement. The Grant Back License shall cover all fields of use. Licensee shall promptly disclose to Licensors all improvements, modifications, extensions and applications of the Technology Rights both orally and in writing.

4.5 Payments. All references in this Agreement to dollars or \$ shall mean dollars of the United States of America. All payments to Licensors shall be made in United States dollars. Licensee shall pay Licensors all Royalties due hereunder on a quarterly basis. The Royalty payment for a given calendar quarter shall be made within thirty (30) days of the end of the calendar quarter in which the Royalty accrued. All payments due under this Agreement shall be paid by check to Licensors at the address shown on page 1 of this Agreement, or to any other person or entity which Licensors may designate to receive payments.

4.6 Reports. Within thirty (30) days following the end of each quarter, Licensee shall provide Licensors with a written report showing sales in such quarter and the amount of Royalty payable with respect thereto. Such reports shall include the following information: (a) the number of units of each type of Licensed Product sold, rented or leased, (b) Net Sales from (a), and (c) Royalty payable. A report of the type required under this Paragraph shall accompany each Royalty payment submitted to Licensors, or shall be sent without a Royalty payment if no Royalty payment is due for the quarter. Within thirty (30) days following the end of each calendar year, Licensee shall provide Licensors with a written, good faith forecast of Net Sales for the next five years. Such forecasts shall merely be projections of future sales and are not binding.

4.7 Overdue Payments. In the event Licensee fails to pay any amount when due hereunder, such amount shall bear interest at the rate of eighteen percent (18%) compounded monthly until the date when such amount is paid in full. In the event that the payment was accidentally overlooked and promptly remitted upon any type of written notice from Licensors including email or facsimile and is paid within ten (10) calendar days of the due date, such amount shall bear simple daily interest at the annual rate of eight percent (8%) until the date when such amount is paid in full.

4.8 Non-Refundability of Payments. All payments made to Licensors by Licensee under this Agreement are made in consideration of Licensors disclosing potentially valuable Trade Secrets to Licensee, providing Licensee with a potential competitive advantage in the marketplace, granting the Technology License and the Trademark License, Licensee's efforts to date in securing patent protection that may benefit Licensee and otherwise potentially enhancing Licensee's competitive position through performance of this Agreement. Accordingly, the Parties deem all payments made hereunder to be

earned when paid and to be completely non-refundable.

SECTION 5 - LICENSEE PERFORMANCE CRITERIA

5.1 Minimum Royalty Payments. Licensor has elected to grant Licensee an exclusive License because of Licensor's belief in Licensee's ability to successfully commercialize Gelastic, Intelli-Gel and Adjustable Shape Pillow in the Licensed Field of Use. In order to ensure Licensor that Licensee's commercialization of Gelastic, Intelli-Gel and Adjustable Shape Pillow will be successful and that certain minimum royalty payments will be made by Licensee to Licensor, Licensee and Licensor have agreed upon a schedule of minimum royalty payments. As detailed in Paragraph 5.4, it is the intention of Licensor and Licensee that the Technology License only remain in force if Licensee makes minimum royalty payments in accordance with the schedule shown in Paragraph 5.2 below.

5.2 Minimum Royalty. A quarterly "Minimum Royalty" shall become payable by Licensee to Licensor on a calendar quarterly basis during the Term of the Agreement. The first Minimum Royalty shall be paid to Licensor within thirty (30) days following the end of the calendar quarter ending June 30, 2004, which calendar quarter shall be designated Quarter 1. A Minimum Royalty shall then be payable from Licensee to Licensor each quarter throughout the Term of the Agreement. In the event that Royalties payable on Net Sales of Licensed Product in any calendar quarter do not reach the minimum amount set out below for such quarter, Licensee shall pay the Minimum Royalty set forth below. If the Royalty for the quarter exceeds the Minimum Royalty, Licensee shall pay the Royalty.

Quarters 1 through 4:	Thirteen thousand five hundred dollars (\$13,500) per quarter
Quarters 5 through 8:	Twenty eight thousand dollars (\$28,000) per quarter
Quarters 9 and thereafter:	Forty two thousand five hundred dollars (\$42,500) per quarter

5.3 Royalty Payments in Excess of Minimum Royalty. No Royalties paid, whether above, below, or equal to the Minimum Royalty, are to be considered an advance or credit against any Royalty (whether the Minimum Royalty or otherwise) which is due at any future date.

SECTION 6 - RESEARCH AND DEVELOPMENT SERVICES

6.1 R&D Services. At any time during the Term of the License, Licensee may request Licensor to perform various research and development projects as directed by Licensee (the "R&D Services"). The R&D Services may include, without limitation, conceptual design, human factors analysis, product design, materials selection, materials analysis, materials testing, mold design, mold and tool making, prototype construction, manufacturing process and manufacturing system design, manufacturing system implementation, other production gear-up services, etc.

6.2 Project Scope and Direction. In the event Licensee desires Licensor to perform R&D Services, Licensee shall provide reasonable detailed research and development assignments to Licensor, scheduling and priority information, ongoing communication and review concerning the nature and direction of the R&D Services, and any other information reasonably requested by Licensor in conjunction with the R&D Services.

6.3 Utilization of R&D Services. R&D Services shall be performed at Licensor's Standard

Rates (defined in Paragraph 6.4 below). All R&D Services must be authorized by Licensee and accepted by Licensor, at the sole discretion of each, and either Licensee or Licensor may terminate R&D Services on any project at any time (which shall not terminate the obligation of payment for services rendered to date). Neither Licensor nor Licensee is obligated to begin any particular project. All R&D Services will be performed on a best reasonable efforts basis, with no guarantee of a particular outcome or result.

6.4 Standard Rates. Licensor's Standard Rates for R&D Services are determined as follows: "Direct Labor", defined as the wages paid or allocated to Licensor's employees, temporary employees, in-house job shoppers, owners, and others acting as or under the direct supervision of Licensor's managers, including benefits and employment taxes except bonuses and retirement plans; plus an overhead burden factor of two (2.00) times Direct Labor; plus outside materials, subcontracts and other outside expenses marked up fifteen percent (15%) as an overhead factor; and then-current standard hourly rates for equipment usage (e.g., CNC milling machines, extruders, injection molding machines, rotational molding machines, and other equipment and machinery). Owners of Licensor reserve the right to forego a personal wage and allocate a wage level which shall be invocable to Licensee as though it were a normal wage. The time of Licensor's accountants and clerical employees shall not be billed to Licensee unless Licensee makes requests for Licensee-specific accounting or clerical services. General management of Licensor and its employees shall not be billed to Licensee; however, direct project management of any R&D Services by Licensor's management, including internal meeting and meetings with Licensee, shall be billed. Licensor's Standard Rates as set forth in this paragraph are subject to change by thirty (30) calendar days' written notice from Licensor to Licensee.

6.5 Access to Facilities and Personnel. During any time that R&D Services under this Agreement are being performed, Licensor shall provide Licensee with access to: (i) all facilities owned or controlled by Licensor to the extent such facilities are being utilized in relation to R&D Services, and (ii) all personnel who participate in providing R&D Services to Licensee. Such access shall be at reasonable times, shall not be so frequent as to disrupt the business operations of Licensor, and shall be subject to reasonable advance notice as required by Licensor to allow Licensor to protect the confidential nature of products and services it may be performing for itself or other parties. Licensee shall pay Licensor's Standard Rates for Licensor's time in support of such access.

6.6 Rights in R&D Work Product. All right, title and interests in and to any intellectual property developed during Licensor's performance of R&D Services hereunder, including without limitation improvements, modifications, extensions and applications of the Technology Rights or any portion thereof shall be held by Licensor. Intellectual property developed during and as a direct result of Licensor's performance of R&D Services hereunder shall be included in the Technology License insofar as it applies to the Licensed Field of Use, and shall be subject to the terms of this Agreement. In the event that R&D Services result in products which are not Licensed Products and for which Licensor did not develop new intellectual property, the License and this Agreement shall be extended to cover such new products, but the royalty shall be reduced to four percent (4%) of Net Sales, unless agreed otherwise in writing by the Parties.

6.7 Payments. Licensee shall pay all R&D Services amounts within ten (10) calendar days of receiving an invoice from Licensor. Invoices may be submitted for work to date, and project completion need not have occurred. For any amounts unpaid after ten (10) days, Licensee will be charged interest at a rate of eighteen percent (18%) annually, compounded monthly. At Licensor's sole discretion, Licensor may require full or partial payments in advance of work being performed.

SECTION 7 - CONFIDENTIALITY

7.1 **Protection.** Licensee shall not disclose, transfer or offer to disclose or transfer any Confidential Information or Confidential Materials to any other person or entity, including without limitation any of Licensee's employees who do not have a legitimate need to know any Confidential Information or utilize any Confidential Materials. Licensee may only disclose, transfer, or offer to disclose or transfer any Confidential Information or Confidential Materials to those of its employees with a legitimate need to know any Confidential Information or utilize any Confidential Materials, and then only to those employees who are bound by the confidentiality terms of this Agreement. Licensee shall not use Confidential Information except for the purpose described in Paragraph 7.2. Licensee shall take all reasonable precautions to ensure against any disclosure, transfer or use of Confidential Information or Confidential Materials not specifically authorized by Licensor in writing. In the event that Licensee desires to use a subcontractor for manufacturing Licensed Products and that subcontractor will have access to Confidential Information, that subcontractor must be approved by Licensor, which approval shall not unreasonably be withheld, and that subcontractor must sign confidentiality agreements with Licensee and Licensor separately, which agreements must fulfill all of the intents and purposes of this Section 7.

7.2 **Purpose.** Licensee may only use the Confidential Information and Confidential Materials for the purpose of commercially exploiting the License within the terms and conditions set forth in this Agreement.

7.3 **Exception.** To the extent that Confidential Information or a portion thereof becomes part of the public domain after the execution of this Agreement, and through no fault or action of Licensee, then as of the date that such Confidential Information becomes part of the public domain, this Section 7 shall prospectively cease to cover such Confidential Information, although this Section 7 shall remain enforceable prospectively with respect to any Confidential Information which has not entered the public domain and this Section 7 shall remain enforceable retrospectively with respect to any Confidential Information that was covered by it on any prior date.

7.4 **Disclosure Concerning Existence of this Agreement.** The Parties shall be permitted to disclose the existence of this Agreement and the general nature of the terms of this Agreement. Particularly, but not by way of limitation, the Licensed Field of Use may be disclosed by Licensor to other prospective licensees of the Technology Rights so as to ensure complete understanding by the prospective licensee of fields of use that remain available for license.

SECTION 8 - OWNERSHIP, RESPONSIBILITY ETC.

8.1 **Ownership.** Nothing in this Agreement assigns or transfers to Licensee ownership of the Technology Rights, the Trademark Rights or any portion thereof. Licensor shall hold title to, and be the worldwide owner of, the Technology Rights and the Trademark Rights, and Licensee shall be an exclusive licensee of the Technology Rights in the Licensed Field of Use and a non-exclusive licensee of the Trademark Rights per the provisions of this Agreement. Licensee shall not patent or attempt to patent Gelastic, Intelli-Gel or Adjustable Shape Pillow or any variation, modification or improvement thereof, without prior written permission from Licensor.

8.2 Responsibility for Patents, Trademarks, Etc. Licensors shall solely control and make all decisions relating to the filing, prosecution, issuance, maintenance, abandonment, defense, etc. of all aspects of the Technology Rights and the Trademark Rights. Notwithstanding the foregoing, Licensors shall duly consider any and all input provided by Licensee concerning the Technology Rights and the Trademark Rights. Any intellectual property work done by Licensors at the specific request of Licensee shall be billed to Licensee at Licensors's Standard Rates for R&D Services, and Licensors shall periodically provide Licensee with statements showing the amount owed by Licensee under this Paragraph, and Licensee shall provide Licensors with a check for reimbursement within thirty (30) days of receiving any statement. The foregoing sentence does not apply to intellectual property work done at the discretion of Licensors, which is addressed in paragraph 8.3 below.

8.3 Infringement, Enforcement and Defense of Patent Rights. If Licensee learns of any activity that may constitute infringement of or threat to any of the Technology Rights or the Trademark Rights, Licensee shall immediately inform Licensors of the facts surrounding such suspected infringement or threat. The Parties recognize that it may be in the best interests of both Parties to cooperate in any settlement discussions and lawsuits, and the Parties agree to negotiate in good faith concerning such cooperation within thirty (30) days of Licensee's notification to Licensors of such infringement. The negotiation shall include such items as the sharing of costs and the sharing of awards or settlement payments. In the event that the negotiations fail, Licensors may, in its sole discretion, take any action that it deems appropriate (including no action) concerning such suspected infringement or threat. If Licensors gains any monetary recovery from the suspected infringer, Licensors may use and dispose of such monetary recovery as it deems appropriate. If, upon the earlier of (i) one (1) year after learning of activity constituting infringement of the Technology Rights or the Trademark Rights, or (ii) thirty (30) days from the request of Licensee, Licensors has not filed suit against the infringer, then Licensee may bring suit against the infringer at its own expense in Licensors's name. If Licensee gains any monetary recovery as a result of such a suit, Licensee shall keep all recovery attributable to provable costs and damages to Licensee and pay one-half of any recovery over and above such damages to Licensors. For any suit brought by Licensee, Licensee shall fully and completely indemnify and hold harmless Licensors from any and all counterclaims, demands, sanctions, judgments, damages, settlements, fines, attorney's fees, lost income, costs, interest and other expenses incurred by Licensors related to such suit.

8.4 Cooperation. In any proceeding concerning procurement, enforcement or defense of the Technology Rights or the Trademark Rights, or any portion thereof, the Parties shall cooperate with and assist each other in such proceeding including making witnesses available to testify in person and by affidavit, making documents available and otherwise providing reasonable cooperation. This Paragraph shall not be construed as requiring either Party to make any statement or representation that the Party believes to be inaccurate, false or incomplete. In the event that such cooperation is at the request of one party acting in the proceeding by its own choice and at its own expense, and such cooperation becomes material in cost to the cooperating party, the requesting party shall reimburse such costs, including lost time.

8.5 Patent Marking. To the extent that Licensors secures any patents for Gelastic, Intelli-Gel or Adjustable Shape Pillow, Licensors shall inform Licensee of appropriate patent marking to be placed on Licensed Products and their packaging, and Licensee shall utilize such marking. Even without such notification, Licensors shall appropriately mark the Licensed Products or their packaging with the current patent and patent pending status (for example, "Protected by U.S. Patents 5,749,111, 5,994,450,

6,026,527, 6,413,458 and other U.S. and International Patents Pending”).

8.6 Quality Control. Licensee agrees to use the appropriate trademarks legibly in all advertising, literature, and packaging associated with Licensed Products. Any reference to the licensed materials must use the terms Gelastic and Intelli-Gel and may not use another mark or name of Licensee's choosing without written permission of Licensor at Licensor's sole discretion, and must indicate that the Gelastic and Intelli-Gel are registered U.S. trademarks belong to Licensor and identify Licensor's city and state. Further, Licensee specifically agrees to make the Intelli-Gel trademark a pronounced aspect of its marketing and packaging, indicating in large lettering in a highly visible and complimentary way on the front of all packaging and advertisements that the Licensed Product contains or is made from Massaging-Action Intelli-Gel[®]. Licensee shall use the circle-R symbol in each instance of the Intelli-Gel and Gelastic trademarks. In order for Licensor to maintain its Trademark Rights, it is necessary for Licensor to monitor the quality of Licensed Products to ensure that they conform to the quality of goods that Gelastic and Intelli-Gel are used to identify. Accordingly, and for any and all other purposes of Licensee, for each SKU number (or equivalent) that Licensee establishes for Licensed Products, beginning as soon as each Licensed Product is commercially available, Licensee shall provide Licensor with at least one (1) product free of charge on a yearly basis, except that twelve (12) pillows shall be provided annually. Licensor may then review the quality of those Licensed Products and provide any input to Licensee regarding quality control as may be appropriate. Licensee shall take such input into consideration and shall make good faith efforts to remedy quality control problems identified by Licensor. Licensor shall then be free to use all of the Licensed Products provided pursuant to this Paragraph as it sees fit, except Licensor shall not sell or rent such Licensed Products in the Field of Use.

SECTION 9 - RECORDKEEPING AND AUDITS

9.1 Record Keeping. Licensee shall keep detailed and complete records of all Licensed Products manufactured; to whom such Licensed Products were sold, rented, leased or otherwise delivered (including quantities, price, date and location of sale, rental, lease or delivery); inventories of Licensed Products ready for sale; and services performed using Licensed Products. Licensee shall keep paper copies of all such records, including all underlying documentation, which shall include but is not limited to purchase orders and invoices for a minimum of three (3) years from the date of creation of a particular record.

9.2 Examinations and Audits. Upon the written request of Licensor and, except as otherwise provided below, at Licensor's expense (provided that Licensor shall not be required to reimburse Licensee for any time, use of facilities or out-of-pocket costs associated with an examination or audit), Licensee shall allow its books and records to be audited by any person or persons of Licensor's choosing so that Licensor can verify that Licensee is properly paying Royalties. For an examination or audit, Licensee shall allow a full examination and audit of its books and records relating to manufacturing, marketing, sales, rentals and leases of Licensed Products and performance of services using Licensed Products, including books and records regarding quantities, sizes, prices, sales, purchase orders, invoices, supply contracts, rental agreements, lease agreements, service contracts, entities purchasing, renting or leasing Licensed Products, locations to which Licensed Products have been delivered, and related documents and information, for all Licensed Products manufactured, sold, lost, destroyed, given away, in inventory or used to perform a service. Such examinations and audits shall be conducted during reasonable times and with reasonable advance notice, so as to minimize interference with Licensee's business operations, for the purpose of determining Licensee's compliance with its Royalty obligations

and other obligations under this Agreement. In any event, Licensee may not delay an examination or audit more than thirty (30) business days from the date of Licensor's written request. Licensor shall submit the results of any examination or audit to Licensee promptly following its completion, and Licensee shall have thirty (30) days from the date of receipt thereof to give written notice of objection as to the results of any examination or audit. If Licensee gives Licensor timely notice of objection, and if the parties fail to resolve the issues outstanding with respect to the disputed report within thirty (30) days, then the Parties shall submit the issues remaining in dispute to a third party mutually agreeable to the Parties (the "Independent Auditor") for resolution. The Parties shall cooperate in furnishing the Independent Auditor with any documents or information relating to the disputed issues, and agree that any determination by the Independent Auditor on the disputed issues shall be final, binding and conclusive upon the Parties. In the event that an examination or audit including, if applicable, any examination or audit by the Independent Auditor, shows that Royalties actually paid for any period were less than ninety-five percent (95%) of the amount properly payable. Licensee shall pay all costs and expenses incurred by Licensor in connection with the examination or audit. Licensee shall pay to Licensor all previously unpaid Royalties, as determined by such examination or audit, within thirty (30) days following the conclusion of such examination or audit. For each calendar or fiscal year in which Licensee performs its own annual audit or has an annual audit performed by outside accountants, Licensee shall require the accountants performing such audit to provide Licensee with a written statement indicating whether the payments due under this agreement have been duly paid to Licensor, and if not, the amount of discrepancy between the amount payable under this Agreement and the amount actually paid. Within thirty (30) days following the conclusion of such audit, Licensee shall pay Licensor any deficiency as indicated by such accountants.

SECTION 10 - INSURANCE

10.1 **Insurance.** Beginning no later than the date on which Licensee sells, rents, leases, transfers or uses the first Licensed Product or performs a service using a Licensed Product and continuing during the entire period of time during which Licensee sells, rents, leases, transfers or uses Licensed Product or performs services using Licensed Products, Licensee shall acquire and maintain a standard product liability insurance policy in the amount of at least One Million Dollars (\$1,000,000.00) which expressly names Licensor as an additional named insured.

SECTION 11 - WARRANTIES, DISCLAIMERS, ETC.

11.1 **DISCLAIMERS.** LICENSOR MAKES NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY THAT ARE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT WITH RESPECT TO THE TECHNOLOGY RIGHTS, THE TRADEMARK RIGHTS OR THE LICENSED PRODUCTS. THE TECHNOLOGY RIGHTS AND THE TRADEMARK RIGHTS ARE MADE AVAILABLE TO LICENSEE STRICTLY ON AN "AS IS" BASIS. LICENSOR DOES NOT WARRANT THAT THE TECHNOLOGY RIGHTS HAVE UTILITY, ARE ERROR FREE, ARE SAFE, ARE RELIABLE, THAT THEY WILL MEET LICENSEE'S REQUIREMENTS, OR THAT ANY PART OF THEM ARE PATENTABLE OR THAT THE PATENTS WILL BE VALID WHEN GRANTED OR THAT THE EXPLOITATION OF THE TECHNOLOGY RIGHTS OR THE TRADEMARK RIGHTS OR COMMERCIALIZING LICENSED PRODUCTS WILL NOT INFRINGE ANY EXISTING OR FUTURE PATENT, TRADEMARK OR OTHER LEGAL RIGHTS OF ANY OTHER

PERSON OR ENTITY. THE PARTIES ACKNOWLEDGE THAT THERE IS CONSIDERABLE PRIOR ART IN THE FIELD OF ELASTOMER GELS, AND WHILE GELASTIC IS THOUGHT TO BE UNIQUE DUE TO ITS ADDITIVES, PROCESSING TECHNIQUES, AND USES, PARTICULARLY IN INTELLI-GEL, THE BASIS PREMISE OF GELASTIC HAS BEEN DISCLOSED IN PATENTS MORE THAN TWENTY YEARS OLD. ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT ARE EXPRESSLY DISCLAIMED AND EXCLUDED. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE TECHNOLOGY RIGHTS, THE TRADEMARK RIGHTS AND THE LICENSED PRODUCTS IS ASSUMED BY LICENSEE.

11.2 REPRESENTATIONS OF LICENSEE. LICENSEE REPRESENTS AND WARRANTS ONLY THAT: (A) IT HAS THE RIGHT, ABILITY AND INTENTION TO ENTER INTO THIS AGREEMENT AND PERFORM ITS OBLIGATIONS HEREUNDER; AND (B) IT HAS EXECUTED NO OTHER AGREEMENT IN CONFLICT WITH THIS AGREEMENT.

11.3 REPRESENTATIONS OF LICENSOR. LICENSOR REPRESENTS AND WARRANTS ONLY THAT: (A) IT HAS THE RIGHT, ABILITY AND INTENTION TO ENTER INTO THIS AGREEMENT AND PERFORM ITS OBLIGATIONS HEREUNDER; (B) IT HAS EXECUTED NO OTHER AGREEMENT IN CONFLICT WITH THIS AGREEMENT; AND (C) TO THE BEST OF LICENSOR'S KNOWLEDGE, WITH THE EXCEPTION OF JOHN CHEN THERE HAVE BEEN NO CLAIMS ASSERTED AS TO THE INVALIDITY OF LICENSOR'S U.S. PATENTS 5,749,111, 5,994,450, 6,026,527, AND 6,413,458 OR AS TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF OTHERS. LICENSOR BELIEVES THAT THE CLAIMS ASSERTED BY JOHN CHEN ARE WITHOUT MERIT.

11.4 LIMITATION ON LIABILITY. LICENSOR SHALL NOT BE LIABLE FOR ANY LIABILITY, CLAIM, LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED DIRECTLY OR INDIRECTLY BY ANY INADEQUACY, DEFICIENCY, OR UNSUITABILITY OF THE TECHNOLOGY RIGHTS, THE TRADEMARK RIGHTS OR THE LICENSED PRODUCTS. IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO, LOSS OF INVESTMENT, LOSS OF ANTICIPATED PROFITS, OR OTHER ECONOMIC LOSS) EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

11.5 Indemnification - Licensee. Licensee assumes all responsibility and liability for the manufacturing, marketing, distribution, sale, rental, lease, use, performance of services, practice and commercial exploitation of the Licensed Products, and for exercise of the Technology Rights. Licensee shall fully and completely indemnify Licensor against, and hold it harmless from, any and all claims, threats of litigation, causes of action and demands relating to the Licensed Products or their manufacture, marketing, distribution, sale, rental, lease, use, practice or commercial exploitation based on any conduct of Licensee and Customers, including exploitation of the License and any breach of this Agreement by Licensee. Licensor shall promptly notify Licensee in writing of any claims, threats of litigation, causes of action or demands for which Licensor is entitled to indemnification from Licensee. Without limiting the generality of the foregoing, Licensee shall defend and hold Licensor harmless on account of, and shall indemnify Licensor against any and all claims, suits, demands, and causes of action of any type or kind whatsoever which may be made against Licensor by any person, firm or corporation on account of

injuries to or death of persons or damage to property or loss of income occurring as a result of or in any way arising out of Licensee's or Customers' manufacture, use, rental, lease or sale or performance of a service, regardless of: (a) whether said claims are based upon the negligent production, use, distribution, or other negligence of Licensor, Licensee or a Customer; (b) whether the same are based upon any express or implied warranty by Licensor, Licensee or a Customer in connection with the production, distribution, rental, lease or use of the Licensed Products or performance of a service using Licensed Products; (c) the location of the court or other place where such claim, suit, demand or cause of action may be made or exist; or (d) whether such claim, suit, demand or cause of action is litigated, settled, arbitrated, mediated or otherwise resolved. Such indemnification shall include any judgments, damages, settlements, fines, attorney's fees, lost income, costs, interest and other expenses incurred as a result of such claims, actions, demands or threats. Licensee shall have the right to settle all claims, actions, demands or threats for which it has agreed to indemnify Licensor without the advance consent of Licensor provided that any such settlement is fully paid by Licensee, such settlement requires no action by Licensor whatsoever either in its execution or enforcement, and such settlement does not in any way restrict or limit Licensor other than Licensor's right to contest such claim, counterclaim, action or demand. Licensee shall have the right to defend or settle all claims, actions, demands or threats for which it has agreed to indemnify Licensor without the advance consent of Licensor, provided, that any such defense or settlement is fully paid by Licensee, such defense or settlement requires no action by Licensor whatsoever either in its execution, in the event of settlement, or enforcement, and such defense or settlement does not in any way materially restrict or limit Licensor other than Licensor's right to contest such claim, counterclaim, action or demand, and further provided, that any such settlement does not affect the patents or trademarks of Licensor.

11.6 Allocation of Risk. This Agreement generally (and this Section 11 in particular) represents a mutually agreed upon allocation of risk between the Parties and the consideration given hereunder reflects such allocation of risk.

SECTION 12 - TERM AND TERMINATION

12.1 Term. Subject to the exceptions below, the term of the License for each region of the Geographic Region in which the License is applicable shall begin on the date that Licensor receives the Royalty Advance in full from Licensee and shall continue for ten years, renewable for successive three-year periods thereafter by mutual written consent which consent shall not be unreasonably withheld, unless terminated for any or all regions of the Geographic Region pursuant to the terms of this Agreement. The License shall not terminate before expiration of such Term except:

- (a) by the mutual written consent of the Parties, or
- (b) as provided in Paragraph 12.2 below, or
- (c) as provided in Paragraph 12.3 below, or
- (d) if Licensee fails to timely obtain and maintain insurance as specified in Paragraph 10.1 above, or
- (e) if Licensee initiates or directly or indirectly participates in any proceeding or litigation which seeks a ruling of invalidity or unenforceability of the Technology Rights or any

portion thereof, cancellation or limitation of the Trademark Rights or any portion thereof, or any other proceeding or adjudication concerning the Technology Rights or the Trademark Rights which Licensor considers adverse to its interests, unless such initiation or participation is pursuant to Licensor's written instructions, with the caveat that nothing in this Agreement shall be construed as prohibiting or limiting Licensee's participation in any such proceeding; the consequence of such participation which is not pursuant to Licensor's written instructions, however, shall be automatic and immediate termination of the License without any notice from Licensor being required to effect such termination, or

(f) if Licensee initiates or directly or indirectly participates in any reexamination proceeding concerning the Patent Rights or any portion thereof, including but not limited to citing prior art to any patent office in any country of the world, unless such initiation or participation is pursuant to Licensor's written instructions, with the caveat that nothing in this Agreement shall be construed as prohibiting or limiting Licensee's participation in any such proceeding; the consequence of such participation which is not pursuant to Licensee's written instructions, however, shall be automatic and immediate termination of the License without any notice from Licensor being required to effect such termination, or

(g) if Licensee attempts to grant or purports to grant a sublicense under the License or any portion thereof without first obtaining the written permission of Licensor.

12.2 Termination at the Will of Licensee. Licensee may terminate the License for any region of or for all of Geographic Region by providing Licensor with at least six (6) months' prior written notice of termination. Termination shall be effective on the date specified by Licensee in such notice, but not sooner than six (6) months if the entire Geographic Region is terminated. If no date is specified in such notice, then termination shall be effective six (6) months following the date of such notice if the termination is for the entire Geographic Region not previously terminated and ten (10) days if the termination is for only a portion of the Geographic Region not previously terminated. If the notice does not specify which regions of the Geographic Region for which the License is being terminated, the termination shall be effective for the entire Geographic Region.

12.3 Breach. If Licensee materially breaches any term of this Agreement and fails to cure such breach within thirty (30) days of receiving notice of breach from Licensor, then Licensor may terminate the License by providing written notice of termination to Licensee. In the event Licensor provides Licensee with a notice of termination of the License, the License shall terminate on the date specified in the notice, and if no date is specified in the notice, the License shall terminate ten (10) days from the date of the notice.

12.4 Effect of Termination. Upon the termination of the License for any particular region or for the entire Geographic Region:

(i) Licensee shall immediately cease making, using and selling Licensed Product and performing services using Licensed Product in the region(s) of the Geographic Region for which the License has terminated.

(ii) if the License has terminated for all regions of the Geographic Region, Licensee shall also immediately return all Confidential Materials to Licensee, and

(iii) Licensors shall not have any further obligation or liability under this Agreement with respect to such region(s) of the Geographic Region in which the License is terminated.

Notwithstanding any such termination of the License, nothing herein shall relieve Licensee of its obligations to pay Royalties or other payments that accrue prior to termination, or to fulfill its obligations under Sections 4, 5, 6, 7, 8, 9, 10, 11, 12 or elsewhere in this Agreement. Further notwithstanding any such termination of the License, Licensed Product on which all money due under this Agreement have already been paid to Licensors may be sold without further permission from Licensors, provided such sale occurs within six (6) months of termination.

SECTION 13 - OTHER PROVISIONS

13.1 Purchase of Licensed Products by Licensors. At any time during the term of the License granted herein, Licensee shall enable Licensors and its employees to purchase reasonable quantities of Licensee's products from Licensee at Licensee's then-current lowest wholesale prices (e.g., at the highest-quantity price quoted to Customers, or at special promotional prices quoted to any Customer). Licensee shall also make available fifty (50) units of each SKU (or equivalent) of each Licensed Product each calendar year to Licensors, which Licensors may purchase at Licensee's fully burdened cost of goods sold. In no event shall Licensors re-sell any of the products described in this Paragraph 13.1 at prices higher than paid by Licensors. Licensee shall provide catalogs and price lists for its products to Licensors as they become available to the general trade.

13.2 Other Responsibilities. Licensee shall obtain any and all necessary licenses, approvals and other government authorizations necessary for the Licensed Products, including for their manufacture, sale, distribution, export, use, rental, lease and practice engaged in by Licensee and any of Licensee's Customers. Licensee shall ensure that the Licensed Products are safe and of good and workmanlike quality. Licensee and its Customers shall strictly comply with all applicable laws and regulations concerning Licensed Products, their manufacture, rental, lease, sale, shipment, export, etc., including but not limited to strict compliance with the Export Control Act of 1979.

13.3 Attorneys' Fees. In the event of any arbitration or litigation between the Parties, the prevailing Party shall be entitled to recover from the non-prevailing Party any and all costs, including reasonable attorneys' fees, incurred by the prevailing Party. Such relief shall be in addition to any other relief, award or damages to which the prevailing Party may be entitled. The court or arbitrators shall determine the prevailing party for the purpose of this Paragraph.

13.4 Injunctive Relief. Licensee and Licensors have determined that in the event of a breach or a threatened breach of this Agreement, the non-breaching party will suffer permanent and irreparable damage. Accordingly, Licensee and Licensors agree that in the event of a breach or threatened breach of this Agreement by the other party, the non-breaching party shall be entitled to preliminary and permanent injunctive relief.

13.5 Severability. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions(s) had never been contained herein; provided that such invalid, illegal or unenforceable provisions shall first be curtailed, limited or

eliminated to the extent necessary to remove such invalidity, illegality or unenforceability with respect to the applicable law as it shall then be applied.

13.6 Governing Law and Forum. This Agreement shall be governed, construed and enforced exclusively in accordance with the laws of the State of Utah and the laws of the United States of America. Exclusive of claims for injunctive relief, which may be brought in any court having jurisdiction over the Parties, any unresolved dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration. The arbitration shall be conducted in Las Vegas, Nevada, or at such other location as may be agreed to by the Parties, in accordance with the National Rules for the Resolution of Disputes of the American Arbitration Association ("AAA") then in effect, and the Parties hereby submit to such jurisdiction and venue, and agree that such jurisdiction and venue are proper. Judgment may be entered on the arbitrators' award in any court having jurisdiction. The AAA fees and all direct expenses of any arbitration proceeding shall be borne evenly by the Parties pending a final determination by the arbitrators as to how the costs shall be borne between the Parties.

13.7 Final Agreement. This Agreement constitutes the final and complete agreement between the Parties concerning the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, written or oral (including prior drafts of this Agreement), between the Parties with respect thereto. No Party shall be bound by any condition, definition, representation, or warranty, other than as expressly set forth herein. Any modification, revision or amendment of this Agreement shall not be effective unless made in a writing executed by both of the Parties.

13.8 Time is of the Essence. Time is of the essence in the performance of all obligations under this Agreement.

13.9 Waiver. Any waiver of, or promise not to enforce, any right under this Agreement shall not be enforceable unless evidenced by a writing signed by the Party making such waiver or promise.

13.10 Headings. The headings in this Agreement are for the purpose of convenience only and shall not limit, enlarge or affect any of the covenants, terms, conditions or provisions of this Agreement.

13.11 Language. The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

13.12 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be sent by registered or certified mail, return receipt requested, or by commercial courier, with a required copy by facsimile transmission to the Parties at the addresses set forth above on page 1 of this Agreement, or to such other person and place as either Party shall designate by notice to the other Party. The party sending notice shall obtain confirmation that all facsimile transmissions were sent to the facsimile telephone number set forth above on page 1 of this Agreement or such other facsimile telephone number as either Party shall designate by notice to the other Party, or, in the event that facsimile transmission is impossible due to problems on the receiving end, that attempts were made.

13.13 Assignments. Licensor has specifically chosen Licensee to commercialize Gelastic, Intelli-Gel and Adjustable Shape Pillow in the Field of Use because of Licensor's belief in Licensee's technical abilities, managerial efficiency, marketing expertise and high standards of business ethics.

Accordingly, Licensee shall not, and Licensee has neither the right nor the power to, assign the License or this Agreement to any other person or entity without the advance written consent of Licensors. In the event that Licensee merges with any other entity, changes its name, or otherwise transforms into a new entity, this Agreement shall be deemed binding upon and enforceable against such new or other entity. Licensors may, at its sole option, assign its rights or obligations hereunder, provided that any third party beneficiaries or third party delegates agree in writing that each such assignment to which the third party beneficiaries or third party delegates are parties is subject to the applicable terms and conditions of this Agreement.

13.14 Relationship. Neither Party is or shall be a partner, joint venturer, agent or representative of the other Party.

13.15 Insolvency and Receivership. If (i) Licensee becomes insolvent for any reason, (ii) a receiver is appointed for Licensee, (iii) Licensee files a petition for bankruptcy, or (iv) an involuntary petition for bankruptcy is filed for Licensee, then this Agreement shall be deemed executory and the License shall be deemed terminated. Licensors shall then be free to license the Technology Rights and the Trademark Rights to any other party on either an exclusive or nonexclusive basis, or to otherwise exploit the Technology Rights and the Trademark Rights, at Licensors's sole discretion.

13.16 Licensee Manufacturing. With respect to the manufacture of Intelli-Gel parts, in the event Licensee sets up its own facility or owns its own tooling or establishes a subcontractor, Licensee agrees to sell, or allow the manufacturer using its tooling to sell, pillow and mattress overlay Intelli-Gel components or other Intelli-Gel components to Licensors or its third party licensees for sales outside the Geographic Region for a reasonable price which shall not exceed twenty percent (20%) above total direct cost plus reasonably allocated overhead cost. For example, if Pacific Wave of Japan as a third party licensee of Licensors desires to purchase futon parts made in Licensee's pillow molds, Licensee will willingly accommodate their reasonable requests, including but not limited to the use of Gelastic of Pacific Wave specified formulations. In the event that Licensee has its own facility or that Licensee has a subcontractor that will not deal directly with Licensors and its third party licensees, Licensors or its third party licensees may supply tooling compatible with Licensee's facility and equipment and in such event the foregoing twenty percent (20%) shall be limited to fifteen percent (15%). Licensee's obligation under this paragraph to Licensors or its third party licensees shall be on a reasonable non-interference basis with Licensee's own production needs. In the event that the third party licensee is Advanced Comfort Technology, Inc. or its successors or assigns or Licensors to the extent that ACT's current license with Licensors is terminated or modified so that rights to any of the technologies or products currently licensed by Licensors to Advanced Comfort Technology, Inc. revert to Licensors or its successors or assigns (any or all hereafter "ACT"), the terms of this paragraph shall be modified to be as follows. Licensee shall supply ACT with Intelli-Gel material for pillows and overlays, on a C.O.D. basis, FOB the place of manufacture, at Licensee's Stated Manufactured Cost (as hereinafter defined). "Stated Manufactured Cost" shall mean a price equal to the sum of Licensee's (i) direct costs of labor and material, (ii) allocable corporate overhead and management and borrowing costs, which together in the aggregate shall not exceed twelve percent (12%) of the Stated Manufacturing Cost, and (iii) amortization of mold costs. Licensee shall also provide ACT and Licensors and Licensors's third party licensees whose geographic regions are outside of the Geographic Region the opportunity to purchase Licensed Products from Licensee or Licensee's subcontractors for resale in their own marketing or geographic areas where such sales do not conflict with the terms of this Agreement, at prices for such Licensed Products comparable to the prices charged by Licensee to its other customers for similar quantities. Licensee has separately disclosed to Licensors (subject to Section 7 of this Agreement) the

identity of a manufacturer in China (the "Chinese Manufacturer") with which Licensee will contract for the manufacture of Licensed Products or components thereof. Licensee intends to make a significant financial commitment to the Chinese Manufacturer in order to enable it to produce Licensed Products or their components for Licensee. Accordingly, it is understood and agreed that, unless and only to the extent specifically authorized in writing by Licensee from time to time, Licensor and its third-party licensees shall not have direct dealings with the Chinese Manufacturer but shall conduct all such dealings through Licensee. The parties agree to negotiate in good faith and agree upon similar restrictions concerning other manufacturers that may be introduced to opportunities to manufacture Licensed Products through contractual and financial arrangements with Licensee.

13.17 Diligent Marketing. As a material requirement of this Agreement, Licensee shall be continually diligent in its manufacturing, marketing, and selling of Licensed Products in both of its two forms: Mattress overlays and pillows. In the event of non-diligence in any one of these three forms, Licensor may terminate the License for that form only, which shall eliminate the requirement for the Minimum Royalty for that form only.

13.18 Execution and Effective Date. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. The individuals signing below represent that they are duly authorized to do so by and on behalf of the Party for whom they are signing. When this Agreement has been executed by the duly authorized representatives of the Parties, it shall be effective as of the date of the last execution, and the Party performing such last execution shall insert the date of such last execution on the first page of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this License Agreement to be duly executed and entered into as of the date first above written.

LICENSEE:

By (signature):



Name (print):

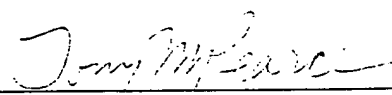
Michael Fox

Title:

President

LICENSOR:

By (signature):



Name (print):

Tony M. Pearce

Title:

Manager

CONTRACT ORIGINAL -- DO NOT REMOVE
FROM FILE

Agreement

This license agreement ("Agreement") is entered into this 6th day of April, 2001 and is by and between the following Parties:

LICENSOR: EdiZONE, LC
a Utah limited liability company
220 North 1300 West #1
Pleasant Grove, Utah USA 84062
TEL: (801) 785-2767
FAX: (801) 785-2611

LICENSEE: Pacific Wave Co., Ltd.
Life Park Bldg, 2F
20 Kumonna, Maizuru
Kyoto, 624-0821, JAPAN
TEL: 773-75-8688
FAX: 773-78-9035

Recitals

WHEREAS, Licensor is the owner of certain Technology Rights and Trademark Rights (as defined in Paragraphs 1.1 and 1.2 below);

WHEREAS, Licensee wishes to obtain a license of the Technology Rights and the Trademark Rights on the terms and conditions set forth herein;

WHEREAS, Licensor desires to grant a license of the Technology Rights and the Trademark Rights to Licensee only on the terms and conditions set forth herein;

NOW, THEREFORE, the Parties agree as follows:

SECTION 1. - DEFINITIONS

1.1 Technology Rights. The following terms shall each have their respective defined meanings:

(a) Gelastic. The term "Gelastic" shall mean technology related to a particular elastomer gel owned by Licensor, including the gel itself, formulations for making the gel, methods for making the gel, products made from the gel and methods for making products from the gel as defined by U.S. Patent 5,994,450. Gelastic shall not be construed to mean "Goooz", which is a slow-rebound elastomer. Gelastic is included in the Licenses of this Agreement only insofar as its use in making Intelli-Gel, and nowhere in this Agreement shall non-Intelli-Gel applications of Gelastic be construed to be included.

(b) DuraGel. The term "DuraGel" shall mean technology related to a particular elastomer

gel owned by Licensor which is made from similar polymer as Gelastic/DuraGel, but of lower molecular weight, including the gel itself, formulations for making the gel, methods for making the gel, products made from the gel and methods for making products from the gel as defined by Licensee's pending U.S. provisional patent dated 9 September 2000. DuraGel shall not be construed to mean "Goooz", which is a slow-rebound elastomer. DuraGel is included in the Licenses of this Agreement only insofar as its use in making Intelli-Gel, and nowhere in this Agreement shall non-Intelli-Gel applications of DuraGel be construed to be included.

(c) Intelli-Gel™. The term "Intelli-Gel", which is sometimes also referred to Gellycomb™, shall mean technology related to a cushioning structure owned by Licensor and made from elastomeric gel materials as defined in this paragraph and having hollow buckling columns, including cushioning devices which incorporate the structure in any column structure pattern, products which incorporate the structure in any column structure pattern, and methods for making products which incorporate the structure in any column structure pattern as defined by U.S. patent 5,749,111. For purposes of this paragraph, elastomer gel materials include Gelastic/DuraGel or other elastomeric gels which have substantially the same properties, but do not include Goooz, gel-coated foams, or gel-coated objects (whether the gel coating is Gelastic/DuraGel or otherwise).

(d) Adjustable Shape Pillow. The term "Adjustable Shape Pillow" shall mean technology related to a bladder-containing pillow wherein the shape of the pillow is modified by means of adjusting the amount of air within a bladder contained within the pillow, including products which incorporate this technology, as defined in Licensor's pending U.S. patent application serial number 60/199,587 filed April 18, 2000, limited to pillows with outer layers of Intelli-Gel, viscoelastic polyurethane open cell foam, and latex open cell foam. The Parties acknowledge that some of the features of the prototype bladders provided to Licensee by Licensor are the proprietary property of the maker of those bladders and not of Licensor.

(e) Trade Secrets. The Parties specifically acknowledge that Gelastic/DuraGel, Intelli-Gel, and Adjustable Shape Pillow are held by and are protected by Licensor as trade secrets as defined in Utah Code Annotated § 13-24-1 *et seq.* The subject matter so held by Licensor is referred to herein as the "Trade Secrets."

(f) Know-How. "Know-How" shall mean information related to manufacturing, production and commercialization of Gelastic/DuraGel, Intelli-Gel, and Adjustable Shape Pillow.

(g) United States Patent Rights. "United States Patent Rights" shall mean the applicable parts of one or more United States patent applications which Licensor has filed or may file in its efforts to secure United States patent protection for Gelastic/DuraGel, Intelli-Gel, and Adjustable Shape Pillow and any and all issued patents, reissue patents, reexamined patents and corrected patents based on any of them.

(h) Foreign Patent Rights. "Foreign Patent Rights" shall mean the applicable parts of any and all foreign national patent applications which Licensor may file in its efforts to secure foreign patent protection for Gelastic/DuraGel, Intelli-Gel, or Adjustable Shape Pillow, and any and all issued patents, reissue patents, reexamined patents and corrected patents based on any of them.

(i) Patent Rights. "Patent Rights" shall mean United States Patent Rights and Foreign Patent Rights collectively.

(j) Technology Rights. "Technology Rights" shall mean Gelastic/DuraGel, Intelli-Gel, Adjustable Shape Pillow, the Trade Secrets, Know-How and Patent Rights, collectively.

1.2 Trademark Rights. "Trademark Rights" shall mean all U.S. common law, federal and state trademark and service mark rights and all foreign trademark and service mark rights to the marks "GELASTIC", "DURAGEL", "INTELLI-GEL" and all variations of them which may be used to designate the source or origin of Gelastic/DuraGel products and services or Intelli-Gel products and services.

1.3 Information. During the performance of the terms of this Agreement, Licensee will learn highly sensitive, proprietary information owned by Licensor. The information may include inventions, trade secrets, information concerning or relating to Gelastic/DuraGel, Intelli-Gel, or Adjustable Shape Pillow, designs, patent applications, formulas, processes, recipes, equipment, prototypes, models, mock-ups, samples, materials, manufacturing methods, business plans, marketing information, customer lists, forecasts and the like ("Information").

1.4 Confidential Information and Confidential Materials. "Confidential Information" means any and all Information disclosed by Licensor to Licensee. "Confidential Materials" means any tangible medium (paper, film, magnetic media, actual models, mock-ups, materials, samples, prototypes, etc.) containing or fabricated using Confidential Information. Confidential Information shall not include any information which (i) was in the public domain prior to the execution of this Agreement, or (ii) was already known by the Receiving Party, provided that this Paragraph 1.4(ii) is only applicable if within ten (10) days of disclosure of any Confidential Information of which the Receiving Party claims prior knowledge, the Receiving Party both notifies the providing Party in writing of such prior knowledge and provides the providing Party with documentary evidence showing such prior knowledge.

1.5 Geographic Region. The term "Geographic Region" shall mean Japan, China including Hong Kong, Singapore, Taiwan, Malaysia, Thailand, Indonesia, Brunet, Korea, the Philippines, Vietnam, Laos, Cambodia, and Myanmar.

1.6 Licensed Field of Use.

(a) "Licensed Field of Use" shall mean consumer bed pillows sold through non-medical-specialty consumer distribution channels, including but not limited to retail stores other than medical product specialty stores, the Internet, catalogs distributed generally to consumers, television shopping channels, direct mail to consumers, and magazines other than medical industry trade magazines. It is acceptable to make medical claims about the products, and to have doctors and chiropractors recommend that patients purchase a pillow, so long as the mattress is not sold in medical specialty channels as described in paragraph 1.6(b) of this Agreement.

(b) The following product areas are specifically excluded from the Licensed Field of Use, though this is not an indication of all excluded products: (i) pillows for use on medical beds (acute care, long term care, and home health care), operating tables, stretchers and gurneys; positioning and heating or cooling pads for surgery; and medical devices intended for relief or reduction of pressure and shear on tissue while lying down or while sitting in a medical

bed (e.g., heel protectors) including human and veterinary products; (ii) all wheelchair related products; (iii) all products distributed through medical channels ("medical channels" shall mean the following: DME dealers, specialty medical dealers, general line medical distributors, medical products catalogs and direct sales to medical care facilities).

1.7 Reserved Fields of Use. "Reserved Fields of Use" shall mean all fields of use not expressly recited in the Licensed Field of Use.

1.8 Licensed Product. "Licensed Product" shall mean any product or service which embodies or is made using Gelastic or DuraGel or a combination thereof (any of these three referred to herein other than in 1.1(a) or 1.1(b) as "Gelastic/DuraGel") or Intelli-Gel or Adjustable Shape Pillow and which subsists within the Licensed Field of Use.

1.9 Customer. "Customer" shall be any third party that acquires possession of a Licensed Product from Licensee (whether by purchase, rental, lease or otherwise), or receives a service performed by Licensee using a Licensed Product.

1.10 Net Sales. For any particular article of Licensed Product sold, rented or leased, "Net Sales" shall mean the actual sales, rental or lease price of the Licensed Product charged by Licensee or its customers at the wholesale level (the level just prior to retail) or at the retail level if sold by Licensee at retail, in a bona fide transaction with a third party, as per invoices covering such sales, rentals or leases, less deductions for all returns and actual non-reimbursed shipping costs applicable to sales. If Licensee exchanges Licensed Products for valuable consideration other than cash, including an exchange for services, "Net Sales" shall be the fair market value of such consideration.

SECTION 2 - THE LICENSES

2.1 Technology License. Subject to and on the terms and conditions contained herein, especially but not limited to the Reserved Technology License of Paragraph 2.2 below, Licensor hereby grants to Licensee, and Licensee hereby accepts, an exclusive license of the Technology Rights to make, use, and sell Licensed Products in the Geographic Region. This license is referred to in this Agreement as the "Technology License." To the extent that the Technology License terminates or is terminated for a particular market, jurisdiction or country under this Agreement, Licensee agrees not to make, use or sell any Licensed Product in such country or region in which the License terminates or is terminated, and Licensor shall be permitted to market and sell or license the Technology Rights, and to manufacture, market and sell products using the Technology Rights to third parties in such country or region.

2.2 Reserved Technology License. Licensor reserves for itself the right to make and use Licensed Product for the purposes of Licensor's further testing and development of Gelastic/DuraGel, Intelli-Gel, and Adjustable Shape Pillow. Licensor also reserves for itself the right to engage in any activities whatsoever with respect to Gelastic/DuraGel, Intelli-Gel, and Adjustable Shape Pillow in the Reserved Fields of Use. This is collectively referred to in this Agreement as the "Reserved Technology License." Notwithstanding the Reserved Technology License, Licensor shall have no obligation to further test, develop or improve Gelastic/DuraGel, Intelli-Gel, or Adjustable Shape Pillow.

2.3 Trademark License. Subject to and on the terms and conditions contained herein, especially but not limited to the Reserved Trademark License of Paragraph 2.4 below, Licensor hereby grants to Licensee, and Licensee hereby accepts, a non-exclusive license of the Trademark Rights for the

limited purpose of designating the source or origin of Licensed Products and services performed using Licensed Products. This is referred to in this Agreement as the "Trademark License."

2.4 Reserved Trademark License. Licensors reserves for itself the right to exploit the Trademark Rights in any manner that is not in direct conflict with the Trademark License.

2.5 The License. As used herein, "License" shall mean the Technology License and the Trademark License collectively.

2.6 No Sublicense without Consent. Licensors has specifically chosen Licensee to commercialize Gelastic/DuraGel, Intelli-Gel, and Adjustable Shape Pillow in the Field of Use because of Licensors belief in Licensee's technical abilities, managerial efficiency, marketing expertise and high standards of business ethics. Accordingly, Licensee shall not, and Licensee has neither the right nor the power to, grant any sublicense under the License to any third party with the exception of wholly owned subsidiaries of Licensee without the advance written consent of Licensors. No party other than Licensee and its wholly owned subsidiaries has the right to exploit the License or any portion thereof.

2.7 Reservations. Rights not expressly granted to Licensee under this Agreement or the License are reserved by Licensors. No part of this Agreement shall be interpreted to prevent Licensors from engaging in any activities that do not directly conflict with any obligation of Licensors under this Agreement.

SECTION 3 - TECHNOLOGY RIGHTS AND CONSULTATION

3.1 Gelastic/DuraGel, Intelli-Gel, and Adjustable Shape Pillow Formulations and Processes. Not later than ten (10) business days after Licensee's payment of the License Issue Fee (defined in Paragraph 4.1 below) to Licensors and Licensee's written request for formulations and processes, Licensors shall provide Licensee with the formulations of Gelastic/DuraGel, Intelli-Gel, and Adjustable Shape Pillow and the manufacturing processes for Gelastic/DuraGel, Intelli-Gel, and Adjustable Shape Pillow which Licensors believes to be best suited for the Licensed Products. From time to time, at Licensors's own initiative or at Licensee's request, Licensors may provide Licensee with updates concerning Gelastic/DuraGel, Intelli-Gel, and Adjustable Shape Pillow formulations and manufacturing processes for Gelastic/DuraGel, Intelli-Gel, and Adjustable Shape Pillow to the extent the Gelastic/DuraGel, Intelli-Gel, and Adjustable Shape Pillow formulations or processes have been improved. Licensee shall only use Gelastic/DuraGel, Intelli-Gel, and Adjustable Shape Pillow formulations provided or approved by Licensors.

3.2 Questions and Consultation. Licensee may contact Licensors from time to time with questions about Gelastic/DuraGel, Intelli-Gel, and Adjustable Shape Pillow and Licensors shall attempt to answer those questions. However, if Licensee wishes for Licensors to engage in any research, development, testing or evaluation work concerning Gelastic/DuraGel, Intelli-Gel, and Adjustable Shape Pillow, Licensee may propose a project to Licensors and Licensors shall respond to Licensee's proposal as Licensors sees fit in a timely manner.

SECTION 4 - CONSIDERATION

4.1 License Issue Fee. The License Issue Fee shall be as shown in the following subparagraphs. Until all installments of the Licensee Issue Fee are paid in full, Licensee shall have all Intelli-Gel for any pillows and bladders for Adjustable Shape Pillows manufactured at manufacturers of Licensor's choosing. After all installments of the License Issue Fee are paid in full, Licensee may manufacture Intelli-Gel for pillows and bladders for Adjustable Shape Pillows at Licensee's own facility or at any other manufacturer of Licensee's choice.

- (a) License Issue Fee for Gelastic/DuraGel and Intelli-Gel. In consideration for grant of the License for Gelastic/DuraGel and Intelli-Gel, Licensee shall pay to Licensor a License Issue Fee of one hundred fifty thousand dollars (\$150,000.00) as follows. Payment A of thirty seven thousand five hundred dollars (\$37,500.00) is payable within ten (10) business days of Licensee obtaining bank financing for its company during the year 2001. In the event bank financing for licensee's company is not obtained during 2001, Payment A shall be due on or before 6 January 2005. Payment B of thirty seven thousand five hundred dollars (\$37,500.00) is payable on or before 6 January 2002. Payment C of thirty seven thousand five hundred dollars (\$37,500.00) is payable on or before 6 January 2003. Payment D of thirty seven thousand five hundred dollars (\$37,500.00) is payable on or before 6 January 2004. The License Issue Fee shall be deemed earned when paid in part or in full and shall be completely non-refundable. The License for Gelastic/DuraGel and Intelli-Gel and the obligation to pay all four installments of the associated License Issue Fee shall take effect upon execution of this Agreement by Licensee and Licensor but the License shall cease to be in effect if any payment due under this Paragraph 4 is not made within five (5) days of its respective due date.
- (b) License Issue Fee for Adjustable Shape Pillow. In consideration for grant of the License for Adjustable Shape Pillow, Licensee shall pay to Licensor a License Issue Fee of fifty thousand dollars (\$50,000.00) as follows. Payment E of twelve thousand five hundred dollars (\$12,500.00) is payable within ten (10) business days of Licensee obtaining bank financing for its company during the year 2001. In the event bank financing for licensee's company is not obtained during 2001, Payment E shall be due on or before 6 January 2005. Payment F of twelve thousand five hundred dollars (\$12,500.00) is payable on or before 6 January 2002. Payment G of twelve thousand five hundred dollars (\$12,500.00) is payable on or before 6 January 2003. Payment H of twelve thousand five hundred dollars (\$12,500.00) is payable on or before 6 January 2004. The License Issue Fee shall be deemed earned when paid in part or in full and shall be completely non-refundable. The License for Gelastic/DuraGel and Intelli-Gel and the obligation to pay all four installments of the associated License Issue Fee shall take effect upon execution of this Agreement by Licensee and Licensor but the License shall cease to be in effect if any payment due under this Paragraph 4 is not made within five (5) days of its respective due date.

4.2 Royalty. Licensee shall pay to Licensor a "Royalty" equal to eight percent (8.00%) of the Net Sales of each Licensed Product sold, rented, leased, or otherwise transferred or used during the Term of the License. The Royalty shall be in addition to the License Issue Fee and shall not be offset by the

License Issue Fee. The triggering event for the payment of the Royalty shall be the earliest of shipment of a Licensed Product by Licensee, the performance of a service using a Licensed Product, preparation of an invoice related to a Licensed Product or an associated service, or use or transfer of a Licensed Product. After the occurrence of a triggering event, the Royalty shall become due regardless of Licensee's receiving payment from its Customer.

4.3 Royalty Reduction. The License includes a complete package of potentially valuable technical information and legal rights for which Licensee is ready, willing and able to pay the License Issue Fee, the Royalty, and other payments and consideration due under this Agreement. Licensee and Licensor acknowledge that Licensor has applied for patent protection for Gelastic/DuraGel, Intelli-Gel, and Adjustable Shape Pillow and may pursue additional patent protection for Gelastic/DuraGel, Intelli-Gel, and Adjustable Shape Pillow, and that patent protection might benefit Licensee. Licensee and Licensor have considered, however, that at some point in time, there may cease to be patent claims or pending patent claims anywhere in the world that cover Gelastic/DuraGel, Intelli-Gel, or Adjustable Shape Pillow or any portion of any of them. In that event, Licensor and Licensee agree that a Royalty should still be payable for the Technology Rights, but that a reduction in Royalty may be appropriate. Accordingly, the Royalty shall be reduced by 0.25% for all Royalties which accrue during any calendar quarter in which no patent claim or pending patent claim covers Gelastic/DuraGel, Intelli-Gel, or Adjustable Shape Pillow or any portion of either of them for the entire calendar quarter.

4.4 Grant Back License of Improvements. In further consideration for the License, Licensee agrees to grant a non-exclusive license (the "Grant Back License") to Licensor of all improvements, modifications, extensions and applications of the Technology Rights and any portion thereof conceived, owned or licensed by Licensee, its successors, assigns, employees and contractors, etc. during the Term of this Agreement. The Grant Back License shall cover all fields of use. Licensee shall promptly disclose to Licensor all improvements, modifications, extensions and applications of the Technology Rights both orally and in writing.

4.5 Payments. All references in this Agreement to dollars or \$ shall mean dollars of the United States of America. All payments to Licensor shall be made in United States dollars by bank wire to the bank account specified by Licensor. Licensee shall pay Licensor all Royalties due hereunder on a quarterly basis. The Royalty payment for a given calendar quarter shall be made within thirty five (35) days of the end of the calendar quarter in which the Royalty accrued. If a bank account is not specified by Licensor, all payments due under this Agreement shall be paid by check to Licensor at the address shown on page 1 of this Agreement, or to any other person or entity which Licensor may designate to receive payments.

4.6 Reports. Within thirty five (35) days following the end of each quarter, Licensee shall provide Licensor with a written report showing sales in such quarter and the amount of Royalty payable with respect thereto. Such reports shall include the following information: (a) the number of units of each type of Licensed Product sold, rented or leased and (b) Royalty payable. A report of the type required under this Paragraph shall accompany each Royalty payment submitted to Licensor, or shall be sent without a Royalty payment if no Royalty payment is due for the quarter. Within thirty five (35) days following the end of each calendar year, Licensee shall provide Licensor with a written, good faith forecast of Royalties for the next five years. Such forecasts shall merely be projections and are not binding.

4.7 Overdue Payments. In the event Licensee fails to pay any amount when due hereunder,

such amount shall immediately accrue a five percent (5.00%) late fee and the amount including the late fee shall bear interest thereafter at the rate of eighteen percent (18%) compounded monthly until the date when such amount plus late fee plus interest is paid in full.

4.8 Non-Refundability of Payments. All payments made to Licensor by Licensee under this Agreement are made in consideration of Licensor disclosing potentially valuable Trade Secrets to Licensee, providing Licensee with a potential competitive advantage in the marketplace, granting the Technology License and the Trademark License, Licensee's efforts to date in securing patent protection that may benefit Licensee and otherwise potentially enhancing Licensee's competitive position through performance of this Agreement. Accordingly, the Parties deem all payments made hereunder to be earned when paid and to be completely non-refundable.

SECTION 5 - LICENSEE PERFORMANCE CRITERIA

5.1 Minimum Royalty Payments. Licensor has elected to grant Licensee an exclusive License because of Licensor's belief in Licensee's ability to successfully commercialize Gelastic/DuraGel, Intelli-Gel, and Adjustable Shape Pillow in the Licensed Field of Use. In order to ensure Licensor that Licensee's commercialization of Gelastic/DuraGel, Intelli-Gel, and Adjustable Shape Pillow will be successful and that certain minimum royalty payments will be made by Licensee to Licensor, Licensee and Licensor have agreed upon a schedule of minimum royalty payments. As detailed in Paragraph 5.4, it is the intention of Licensor and Licensee that the Technology License only remain in force if Licensee makes minimum royalty payments in accordance with the schedule shown in Paragraph 5.2 below.

5.2 Minimum Royalty. A quarterly "Minimum Royalty" shall become payable by Licensee to Licensor on a calendar quarterly basis during the Term of the Agreement. The first Minimum Royalty shall be paid to Licensor within thirty (30) days following the end of the calendar quarter ending September 30, 2001, which calendar quarter shall be designated Quarter 1. A Minimum Royalty shall then be payable from Licensee to Licensor each quarter throughout the Term of the Agreement. In the event that Royalties payable on Net Sales of Licensed Product in any calendar quarter do not reach the minimum amount set out below for such quarter, Licensee shall pay the Minimum Royalty set forth below. If the Royalty for the quarter exceeds the Minimum Royalty, Licensee shall pay the Royalty.

Quarters 1 through 4:	Five thousand dollars (\$5,000.00) per quarter
Quarters 5 through 8:	Seven thousand five hundred dollars (\$7,500.00) per quarter
Quarters 9 through 12:	Ten thousand dollars (\$10,000.00) per quarter
Quarters 13 through 16:	Fifteen thousand dollars (\$15,000.00) per quarter
Quarter 17 and thereafter:	Twenty thousand dollars (\$20,000.00) per quarter

5.3 Royalty Payments in Excess of Minimum Royalty. No Royalties paid, whether above, below, or equal to the Minimum Royalty, are to be considered an advance or credit against any Royalty (whether the Minimum Royalty or otherwise) which is due at any future date.

5.4 Failure to Make Minimum Royalty Payments. For any given calendar quarter, if Licensee does not either (i) pay the appropriate Royalty to Licensor (as defined in Paragraph 4.2 above), or (ii) in the event that the Royalty for a given calendar quarter does not equal or exceed the Minimum Royalty for that quarter as set forth in Paragraph 5.2, pay the Minimum Royalty payment to Licensor for that calendar quarter, then Licensor may, in Licensor's sole discretion, terminate the License for the entire Geographic

Region or any part thereof by providing written notice of termination to Licensee. Licensor shall then be free to seek another licensee (or licensees) of the Technology Rights or otherwise use or dispose of the Technology Rights in such regions as Licensor sees fit.

SECTION 6 - RESEARCH AND DEVELOPMENT SERVICES

6.1 R&D Services. At any time during the Term of the License, Licensee may request Licensor to perform various research and development projects as directed by Licensee (the "R&D Services"). The R&D Services may include, without limitation, conceptual design, human factors analysis, product design, materials selection, materials analysis, materials testing, mold design, mold and tool making, prototype construction, manufacturing process and manufacturing system design, manufacturing system implementation, other production gear-up services, etc.

6.2 Project Scope and Direction. In the event Licensee desires Licensor to perform R&D Services, Licensee shall provide reasonable detailed research and development assignments to Licensor, scheduling and priority information, ongoing communication and review concerning the nature and direction of the R&D Services, and any other information reasonably requested by Licensor in conjunction with the R&D Services.

6.3 Utilization of R&D Services. R&D Services shall be performed at Licensor's Standard Rates (defined in Paragraph 6.4 below). All R&D Services must be authorized by Licensee and accepted by Licensor, at the sole discretion of each, and either Licensee or Licensor may terminate R&D Services on any project at any time (which shall not terminate the obligation of payment for services rendered to date). Neither Licensor nor Licensee is obligated to begin any particular project. All R&D Services will be performed on a best reasonable efforts basis, with no guarantee of a particular outcome or result.

6.4 Standard Rates. Licensor's Standard Rates for R&D Services are determined as follows: "Direct Labor", defined as the wages paid or allocated to Licensor's employees, temporary employees, in-house job shoppers, owners, and others acting as or under the direct supervision of Licensor's managers, including benefits and employment taxes except bonuses and retirement plans; plus an overhead burden factor of two (2.00) times Direct Labor; plus outside materials, subcontracts and other outside expenses marked up fifteen percent (15%) as an overhead factor; and then-current standard hourly rates for equipment usage (e.g., CNC milling machines, extruders, injection molding machines, rotational molding machines, and other equipment and machinery). Owners of Licensor reserve the right to forego a personal wage and allocate a wage level which shall be invoicable to Licensee as though it were a normal wage. The time of Licensor's accountants and clerical employees shall not be billed to Licensee unless Licensee makes requests for Licensee-specific accounting or clerical services. General management of Licensor and its employees shall not be billed to Licensee; however, direct project management of any R&D Services by Licensor's management, including internal meeting and meetings with Licensee, shall be billed. Licensor's Standard Rates as set forth in this paragraph are subject to change by thirty (30) calendar days' written notice from Licensor to Licensee.

6.5 Access to Facilities and Personnel. During any time that R&D Services under this Agreement are being performed, Licensor shall provide Licensee with access to: (i) all facilities owned or controlled by Licensor to the extent such facilities are being utilized in relation to R&D Services, and (ii) all personnel who participate in providing R&D Services to Licensee. Such access shall be at reasonable times, shall not be so frequent as to disrupt the business operations of Licensor, and shall be subject to

reasonable advance notice as required by Licensor to allow Licensor to protect the confidential nature of products and services it may be performing for itself or other parties. Licensee shall pay Licensor's Standard Rates for Licensor's time in support of such access.

6.6 Rights in R&D Work Product. All right, title and interests in and to any intellectual property developed during Licensor's performance of R&D Services hereunder, including without limitation improvements, modifications, extensions and applications of the Technology Rights or any portion thereof shall be held by Licensor. Intellectual property developed during and as a direct result of Licensor's performance of R&D Services hereunder shall be included in the Technology License insofar as it applies to the Licensed Field of Use, and shall be subject to the terms of this Agreement. In the event that R&D Services result in products which are not Licensed Products and for which Licensor did not develop new intellectual property, the License and this Agreement shall be extended to cover such new products, but the royalty shall be reduced to four percent (4%) of **Net sales**, unless agreed otherwise in writing by the Parties.

6.7 Payments. Licensee shall pay all R&D Services amounts within ten (10) calendar days of receiving an invoice from Licensor. Invoices may be submitted for work to date, and project completion need not have occurred. For any amounts unpaid after ten (10) days, Licensee will be charged interest at a rate of eighteen percent (18%) annually, compounded monthly. At Licensor's sole discretion, Licensor may require full or partial payments in advance of work being performed.

SECTION 7 - CONFIDENTIALITY

7.1 Protection. Licensee shall not disclose, transfer or offer to disclose or transfer any Confidential Information or Confidential Materials to any other person or entity, including without limitation any of Licensee's employees who do not have a legitimate need to know any Confidential Information or utilize any Confidential Materials. Licensee may only disclose, transfer, or offer to disclose or transfer any Confidential Information or Confidential Materials to those of its employees with a legitimate need to know any Confidential Information or utilize any Confidential Materials, and then only to those employees who are bound by the confidentiality terms of this Agreement. Licensee shall not use Confidential Information except for the purpose described in Paragraph 7.2. Licensee shall take all reasonable precautions to ensure against any disclosure, transfer or use of Confidential Information or Confidential Materials not specifically authorized by Licensor in writing. In the event that Licensee desires to use a subcontractor for manufacturing Licensed Products and that subcontractor will have access to Confidential Information, that subcontractor must be approved by Licensor, which approval shall not unreasonably be withheld, and that subcontractor must sign confidentiality agreements with Licensee and Licensor separately, which agreements must fulfill all of the intents and purposes of this Section 7.

7.2 Purpose. Licensee may only use the Confidential Information and Confidential Materials for the purpose of commercially exploiting the License within the terms and conditions set forth in this Agreement.

7.3 Exception. To the extent that Confidential Information or a portion thereof becomes part of the public domain after the execution of this Agreement, and through no fault or action of Licensee, then as of the date that such Confidential Information becomes part of the public domain, this Section 7

shall prospectively cease to cover such Confidential Information, although this Section 7 shall remain enforceable prospectively with respect to any Confidential Information which has not entered the public domain and this Section 7 shall remain enforceable retrospectively with respect to any Confidential Information that was covered by it on any prior date.

7.4 Disclosure Concerning Existence of this Agreement. The Parties shall be permitted to disclose the existence of this Agreement and the general nature of the terms of this Agreement. Particularly, but not by way of limitation, the Licensed Field of Use may be disclosed by Licensor to other prospective licensees of the Technology Rights so as to ensure complete understanding by the prospective licensee of fields of use that remain available for license.

SECTION 8 - OWNERSHIP, RESPONSIBILITY ETC.

8.1 Ownership. Nothing in this Agreement assigns or transfers to Licensee ownership of the Technology Rights, the Trademark Rights or any portion thereof. Licensor shall hold title to, and be the worldwide owner of, the Technology Rights and the Trademark Rights, and Licensee shall be an exclusive licensee of the Technology Rights in the Licensed Field of Use and a non-exclusive licensee of the Trademark Rights per the provisions of this Agreement. Licensee shall not patent or attempt to patent Gelastic/DuraGel, Intelli-Gel, or Adjustable Shape Pillow or any variation, modification or improvement thereof, without prior written permission from Licensor.

8.2 Responsibility for Patents, Trademarks, Etc. Licensor shall solely control and make all decisions relating to the filing, prosecution, issuance, maintenance, abandonment, defense, etc. of all aspects of the Technology Rights and the Trademark Rights. Notwithstanding the foregoing, Licensor shall duly consider any and all input provided by Licensee concerning the Technology Rights and the Trademark Rights. Any intellectual property work done by Licensor at the specific request of Licensee shall be billed to Licensee at Licensor's Standard Rates for R&D Services, and Licensor shall periodically provide Licensee with statements showing the amount owed by Licensee under this Paragraph, and Licensee shall provide Licensor with a check for reimbursement within thirty (30) days of receiving any statement. The foregoing sentence does not apply to intellectual property work done at the discretion of Licensor, which is addressed in paragraph 8.3 below.

8.3 Responsibility for Patents, Trademarks, Etc. If the License is active at the time that Licensor notifies Licensee that the rights can be applied for or obtained in the Geographic Region, Licensee agrees to pay all application fees, issue fees, or other fees or costs of services including legal services necessary to have the patent prosecuted, issued, and maintained in the Geographic Region. Licensee is authorized to act on its own accord and at its own expense in stopping all infringement of such Licensee-funded non-USA patents and all violations of the License by third parties, whether inside or outside the Licensed Field of Use, provided Licensee keeps Licensor fully informed of plans to stop such infringement and violations and Licensor fully approves in writing all actions of Licensee in this regard.

8.4 Infringement, Enforcement and Defense of Patent Rights. If Licensee learns of any activity that may constitute infringement of or threat to any of the Technology Rights or the Trademark Rights, Licensee shall immediately inform Licensor of the facts surrounding such suspected infringement or threat. The Parties recognize that it may be in the best interests of both Parties to cooperate in any settlement discussions and lawsuits, and the Parties agree to negotiate in good faith concerning such

cooperation within thirty (30) days of Licensee's notification to Licensors of such infringement. The negotiation shall include such items as the sharing of costs and the sharing of awards or settlement payments. In the event that the negotiations fail, Licensors may, in its sole discretion, take any action that it deems appropriate (including no action) concerning such suspected infringement or threat. If Licensors gains any monetary recovery from the suspected infringer, Licensors may use and dispose of such monetary recovery as it deems appropriate. If, one (1) year after learning of activity constituting infringement of the Technology Rights or the Trademark Rights, Licensors has not filed suit against the infringer, then Licensee may bring suit against the infringer at its own expense in Licensors's name. If Licensee gains any monetary recovery as a result of such a suit, Licensee shall keep all recovery attributable to provable costs and damages to Licensee and pay one-half of any recovery over and above such damages to Licensors. For any suit brought by Licensee, Licensee shall fully and completely indemnify and hold harmless Licensors from any and all counterclaims, demands, sanctions, judgments, damages, settlements, fines, attorney's fees, lost income, costs, interest and other expenses incurred by Licensors related to such suit.

8.5 Cooperation. In any proceeding concerning procurement, enforcement or defense of the Technology Rights or the Trademark Rights, or any portion thereof, the Parties shall cooperate with and assist each other in such proceeding including making witnesses available to testify in person and by affidavit, making documents available and otherwise providing reasonable cooperation. This Paragraph shall not be construed as requiring either Party to make any statement or representation that the Party believes to be inaccurate, false or incomplete. In the event that such cooperation is at the request of one party acting in the proceeding by its own choice and at its own expense, and such cooperation becomes material in cost to the cooperating party, the requesting party shall reimburse such costs, including lost time.

8.6 Patent Marking. To the extent that Licensors secures any patents for Gelastic/DuraGel, Intelli-Gel, or Adjustable Shape Pillow, Licensors shall inform Licensee of appropriate patent marking to be placed on Licensed Products and their packaging, and Licensee shall utilize such marking. Even without such notification, Licensors shall appropriately mark the Licensed Products or their packaging with the current patent and patent pending status (for example, "Protected by Patent # _____ and other patents pending").

8.7 Quality Control. Licensee agrees to use the appropriate trademarks legibly in all advertising, literature, and packaging associated with Licensed Products. Any reference to the licensed materials must use the term Intelli-Gel and may not use another mark or name of Licensee's choosing without written permission of Licensors at Licensors's sole discretion, and must indicate that the Intelli-Gel trademark belongs to Licensors and identify Licensors's city and state. In order for Licensors to maintain its Trademark Rights, it is necessary for Licensors to monitor the quality of Licensed Products to ensure that they conform to the quality of goods that Intelli-Gel are used to identify. Accordingly, and for any and all other purposes of Licensee, for each SKU number (or equivalent) that Licensee establishes for Licensed Products, Licensee shall provide Licensors with at least three (3) products free of charge on a yearly basis. Licensors may then review the quality of those Licensed Products and provide any input to Licensee regarding quality control as may be appropriate. Licensee shall take such input into consideration and shall make good faith efforts to remedy quality control problems identified by Licensors. Licensors shall then be free to use all of the Licensed Products provided pursuant to this Paragraph as it sees fit, except Licensors shall not sell or rent such Licensed Products in the Field of Use.

SECTION 9 - RECORDKEEPING AND AUDITS

9.1 **Record Keeping.** Licensee shall keep detailed and complete records of all Licensed Products manufactured; to whom such Licensed Products were sold, rented, leased or otherwise delivered (including quantities, price, date and location of sale, rental, lease or delivery); inventories of Licensed Products ready for sale; and services performed using Licensed Products. Licensee shall keep paper copies of all such records, including all underlying documentation, which shall include but is not limited to purchase orders and invoices for a minimum of five (5) years from the date of creation of a particular record.

9.2 **Examinations and Audits.** Upon the written request of Licensor and, except as otherwise provided below, at Licensor's expense (provided that Licensor shall not be required to reimburse Licensee for any time, use of facilities or out-of-pocket costs associated with an examination or audit), Licensee shall allow its books and records to be audited by any person or persons of Licensor's choosing so that Licensor can verify that Licensee is properly paying Royalties. For an examination or audit, Licensee shall allow a full examination and audit of its books and records relating to manufacturing, marketing, sales, rentals and leases of Licensed Products and performance of services using Licensed Products, including books and records regarding quantities, sizes, prices, sales, purchase orders, invoices, supply contracts, rental agreements, lease agreements, service contracts, entities purchasing, renting or leasing Licensed Products, locations to which Licensed Products have been delivered, and related documents and information, for all Licensed Products manufactured, sold, lost, destroyed, given away, in inventory or used to perform a service. Such examinations and audits shall be conducted during reasonable times and with reasonable advance notice, so as to minimize interference with Licensee's business operations, for the purpose of determining Licensee's compliance with its Royalty obligations and other obligations under this Agreement. In any event, Licensee may not delay an examination or audit more than ten (10) business days from the date of Licensor's written request. In the event that an examination or audit shows that Royalties actually paid for any period were less than ninety-eight percent (98%) of the amount properly payable, Licensee shall pay all costs and expenses incurred by Licensor in connection with the examination or audit. Licensee shall pay to Licensor all previously unpaid Royalties, as determined by such examination or audit, within thirty (30) days following the conclusion of such examination or audit. For each calendar or fiscal year in which Licensee performs its own annual audit or has an annual audit performed by outside accountants, Licensee shall require the accountants performing such audit to provide Licensee with a written statement indicating whether the payments due under this agreement have been duly paid to Licensor, and if not, the amount of discrepancy between the amount payable under this Agreement and the amount actually paid. Within thirty (30) days following the conclusion of such audit, Licensee shall pay Licensor any deficiency as indicated by such accountants.

SECTION 10 - INSURANCE

10.1 **Insurance.** Beginning no later than the date on which Licensee sells, rents, leases, transfers or uses the first Licensed Product or performs a service using a Licensed Product and continuing during the entire period of time during which Licensee sells, rents, leases, transfers or uses Licensed Product or performs services using Licensed Products, Licensee shall acquire and maintain a standard product liability insurance policy in the amount of Two Million Dollars (\$2,000,000.00).

SECTION 11 - WARRANTIES, DISCLAIMERS, ETC.

11.1 DISCLAIMERS. LICENSOR MAKES NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY THAT ARE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT WITH RESPECT TO THE TECHNOLOGY RIGHTS, THE TRADEMARK RIGHTS OR THE LICENSED PRODUCTS. THE TECHNOLOGY RIGHTS AND THE TRADEMARK RIGHTS ARE MADE AVAILABLE TO LICENSEE STRICTLY ON AN "AS IS" BASIS. LICENSOR DOES NOT WARRANT THAT THE TECHNOLOGY RIGHTS HAVE UTILITY, ARE ERROR FREE, ARE SAFE, ARE RELIABLE, THAT THEY WILL MEET LICENSEE'S REQUIREMENTS, OR THAT ANY PART OF THEM ARE PATENTABLE OR THAT THE PATENTS WILL BE VALID WHEN GRANTED OR THAT THE EXPLOITATION OF THE TECHNOLOGY RIGHTS OR THE TRADEMARK RIGHTS OR COMMERCIALIZING LICENSED PRODUCTS WILL NOT INFRINGE ANY EXISTING OR FUTURE PATENT, TRADEMARK OR OTHER LEGAL RIGHTS OF ANY OTHER PERSON OR ENTITY. THE PARTIES ACKNOWLEDGE THAT THERE IS CONSIDERABLE PRIOR ART IN THE FIELD OF ELASTOMER GELS, AND WHILE GELASTIC/DURAGEL IS THOUGHT TO BE UNIQUE DUE TO ITS ADDITIVES, PROCESSING TECHNIQUES, AND USES, PARTICULARLY IN INTELLI-GEL, THE BASIS PREMISE OF GELASTIC/DURAGEL HAS BEEN DISCLOSED IN PATENTS MORE THAN TWENTY YEARS OLD. ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT ARE EXPRESSLY DISCLAIMED AND EXCLUDED. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE TECHNOLOGY RIGHTS, THE TRADEMARK RIGHTS AND THE LICENSED PRODUCTS IS ASSUMED BY LICENSEE.

11.2 REPRESENTATIONS OF LICENSEE. LICENSEE REPRESENTS AND WARRANTS ONLY THAT: (A) IT HAS THE RIGHT, ABILITY AND INTENTION TO ENTER INTO THIS AGREEMENT AND PERFORM ITS OBLIGATIONS HEREUNDER; AND (B) IT HAS EXECUTED NO OTHER AGREEMENT IN CONFLICT WITH THIS AGREEMENT.

11.3 LIMITATION ON LIABILITY. LICENSOR SHALL NOT BE LIABLE FOR ANY LIABILITY, CLAIM, LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED DIRECTLY OR INDIRECTLY BY ANY INADEQUACY, DEFICIENCY, OR UNSUITABILITY OF THE TECHNOLOGY RIGHTS, THE TRADEMARK RIGHTS OR THE LICENSED PRODUCTS. IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO, LOSS OF INVESTMENT, LOSS OF ANTICIPATED PROFITS, OR OTHER ECONOMIC LOSS) EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

11.4 Indemnification - Licensee. Licensee assumes all responsibility and liability for the manufacturing, marketing, distribution, sale, rental, lease, use, performance of services, practice and commercial exploitation of the Licensed Products, and for exercise of the Technology Rights. Licensee shall fully and completely indemnify Licensor against, and hold it harmless from, any and all claims, threats of litigation, causes of action and demands relating to the Licensed Products or their manufacture, marketing, distribution, sale, rental, lease, use, practice or commercial exploitation based on any conduct of Licensee and Customers, including exploitation of the License and any breach of this Agreement by Licensee. Without limiting the generality of the foregoing, Licensee shall defend and hold Licensor harmless on account of, and shall indemnify Licensor against any and all claims, suits, demands, and

causes of action of any type or kind whatsoever which may be made against Licensor by any person, firm or corporation on account of injuries to or death of persons or damage to property or loss of income occurring as a result of or in any way arising out of Licensee's or Customers' manufacture, use, rental, lease or sale or performance of a service, regardless of: (a) whether said claims are based upon the negligent production, use, distribution, or other negligence of Licensor, Licensee or a Customer; (b) whether the same are based upon any express or implied warranty by Licensor, Licensee or a Customer in connection with the production, distribution, rental, lease or use of the Licensed Products or performance of a service using Licensed Products; (c) the location of the court or other place where such claim, suit, demand or cause of action may be made or exist; or (d) whether such claim, suit, demand or cause of action is litigated, settled, arbitrated, mediated or otherwise resolved. Such indemnification shall include any judgments, damages, settlements, fines, attorney's fees, lost income, costs, interest and other expenses incurred as a result of such claims, actions, demands or threats. Licensee shall have the right to settle all claims, actions, demands or threats for which it has agreed to indemnify Licensor without the advance consent of Licensor provided that any such settlement is fully paid by Licensee, such settlement requires no action by Licensor whatsoever either in its execution or enforcement, and such settlement does not in any way restrict or limit Licensor other than Licensor's right to contest such claim, counterclaim, action or demand.

11.5 Allocation of Risk. This Agreement generally (and this Section 11 in particular) represents a mutually agreed upon allocation of risk between the Parties and the consideration given hereunder reflects such allocation of risk.

SECTION 12 - TERM AND TERMINATION

12.1 Term. Subject to the exceptions below, the term of the License for each region of the Geographic Region in which the License is applicable shall begin on the date that Licensor receives the first installment of the License Issue Fee from Licensee and shall continue perpetually unless terminated for any or all regions of the Geographic Region pursuant to the terms of this Agreement. The License shall not terminate before expiration of such Term except:

- (a) by the mutual written consent of the Parties, or
- (b) as provided in Paragraph 12.2 below, or
- (c) as provided in Paragraph 12.3 below, or
- (d) if Licensee fails to timely obtain and maintain insurance as specified in Paragraph 10.1 above, or
- (e) if Licensee fails to pay any money due under this Agreement, or
- (f) if Licensee initiates or directly or indirectly participates in any proceeding or litigation which seeks a ruling of invalidity or unenforceability of the Technology Rights or any portion thereof, cancellation or limitation of the Trademark Rights or any portion thereof, or any other proceeding or adjudication concerning the Technology Rights or the Trademark Rights which Licensor considers adverse to its interests, unless such initiation or participation is pursuant

to Licensor's written instructions, with the caveat that nothing in this Agreement shall be construed as prohibiting or limiting Licensee's participation in any such proceeding; the consequence of such participation which is not pursuant to Licensor's written instructions, however, shall be automatic and immediate termination of the License without any notice from Licensor being required to effect such termination, or

(g) if Licensee initiates or directly or indirectly participates in any reexamination proceeding concerning the Patent Rights or any portion thereof, including but not limited to citing prior art to any patent office in any country of the world, unless such initiation or participation is pursuant to Licensor's written instructions, with the caveat that nothing in this Agreement shall be construed as prohibiting or limiting Licensee's participation in any such proceeding; the consequence of such participation which is not pursuant to Licensee's written instructions, however, shall be automatic and immediate termination of the License without any notice from Licensor being required to effect such termination, or

(h) if Licensee attempts to grant or purports to grant a sublicense under the License or any portion thereof without first obtaining the written permission of Licensor.

12.2 Termination at the Will of Licensee. Licensee may terminate the License for any region of or for all of Geographic Region by providing Licensor with at least six (6) months' prior written notice of termination. Termination shall be effective on the date specified by Licensee in such notice, but not sooner than six (6) months if the entire Geographic Region is terminated. If no date is specified in such notice, then termination shall be effective six (6) months following the date of such notice if the termination is for the entire Geographic Region not previously terminated and ten (10) days if the termination is for only a portion of the Geographic Region not previously terminated. If the notice does not specify which regions of the Geographic Region for which the License is being terminated, the termination shall be effective for the entire Geographic Region.

12.3 Breach. If Licensee breaches any term of this Agreement and fails to cure such breach within thirty (30) days of receiving notice of breach from Licensor, then Licensor may terminate the License by providing written notice of termination to Licensee. If Licensee repeats a type of breach after it has been cured (e.g., failure to make a monetary payment on time), the breach shall be deemed incurable and Licensor shall then have the right to terminate the License at any time by providing written notice of termination to Licensee. In the event Licensor provides Licensee with a notice of termination of the License, the License shall terminate on the date specified in the notice, and if no date is specified in the notice, the License shall terminate ten (10) days from the date of the notice.

12.4 Effect of Termination. Upon the termination of the License for any particular region or for the entire Geographic Region:

(i) Licensee shall immediately cease making, using and selling Licensed Product and performing services using Licensed Product in the region(s) of the Geographic Region for which the License has terminated,

(ii) if the License has terminated for all regions of the Geographic Region, Licensee shall also immediately return all Confidential Materials to Licensee, and

(iii) Licensor shall not have any further obligation or liability under this Agreement

with respect to such region(s) of the Geographic Region in which the License is terminated.

Notwithstanding any such termination of the License, nothing herein shall relieve Licensee of its obligations to pay Royalties or other payments that accrue prior to termination, or to fulfill its obligations under Sections 4, 5, 6, 7, 8, 9, 10, 11, 12 or elsewhere in this Agreement. Further notwithstanding any such termination of the License, Licensed Product on which all money due under this Agreement have already been paid to Licensor may be sold without further permission from Licensor, provided such sale occurs within six (6) months of termination.

SECTION 13 - GENERAL PROVISIONS

13.1 Purchase of Licensed Products by Licensor. At any time during the term of the License granted herein, Licensee shall enable Licensor and its employees to purchase reasonable quantities of Licensee's products from Licensee at Licensee's then-current lowest wholesale prices (e.g., at the highest-quantity price quoted to Customers, or at special promotional prices quoted to any Customer). Licensee shall also make available one hundred (100) units of each SKU (or equivalent) of each Licensed Product each calendar year to Licensor, which Licensor may purchase at Licensee's fully burdened cost of goods sold. In no event shall Licensor re-sell or rent any of the products described in this Paragraph 13.1 at prices higher than paid by Licensor. Licensee shall provide catalogs and price lists for its products to Licensor as they become available to the general trade.

13.2 Other Responsibilities. Licensee shall obtain any and all necessary licenses, approvals and other government authorizations necessary for the Licensed Products, including for their manufacture, sale, distribution, export, use, rental, lease and practice engaged in by Licensee and any of Licensee's Customers. Licensee shall ensure that the Licensed Products are safe and of good and workmanlike quality. Licensee and its Customers shall strictly comply with all applicable laws and regulations concerning Licensed Products, their manufacture, rental, lease, sale, shipment, export, etc., including but not limited to strict compliance with the Export Control Act of 1979.

13.3 Attorneys' Fees. In the event of any arbitration or litigation between the Parties, the prevailing Party shall be entitled to recover from the non-prevailing Party any and all costs, including reasonable attorneys' fees, incurred by the prevailing Party. Such relief shall be in addition to any other relief, award or damages to which the prevailing Party may be entitled. The court or arbitrators shall determine the prevailing party for the purpose of this Paragraph.

13.4 Injunctive Relief. Licensee and Licensor have determined that in the event of a breach or a threatened breach of this Agreement, the non-breaching party will suffer permanent and irreparable damage. Accordingly, Licensee and Licensor agree that in the event of a breach or threatened breach of this Agreement by the other party, the non-breaching party shall be entitled to preliminary and permanent injunctive relief.

13.5 Severability. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions(s) had never been contained herein; provided that such invalid, illegal or unenforceable provisions shall first be curtailed, limited or eliminated to the extent necessary to remove such invalidity, illegality or unenforceability with respect to

the applicable law as it shall then be applied.

13.6 Governing Law and Forum. This Agreement shall be governed, construed and enforced exclusively in accordance with the laws of the State of Utah and the laws of the United States of America. Any arbitration or litigation between the Parties shall be conducted exclusively in Salt Lake City, Utah, U.S.A. and the Parties hereby submit to such exclusive jurisdiction and venue, and agree that such jurisdiction and venue are proper.

13.7 Final Agreement. This Agreement constitutes the final and complete agreement between the Parties concerning the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, written or oral (including prior drafts of this Agreement), between the Parties with respect thereto. No Party shall be bound by any condition, definition, representation, or warranty, other than as expressly set forth herein. Any modification, revision or amendment of this Agreement shall not be effective unless made in a writing executed by both of the Parties.

13.8 Time is of the Essence. Time is of the essence in the performance of all obligations under this Agreement.

13.9 Waiver. Any waiver of, or promise not to enforce, any right under this Agreement shall not be enforceable unless evidenced by a writing signed by the Party making such waiver or promise.

13.10 Headings. The headings in this Agreement are for the purpose of convenience only and shall not limit, enlarge or affect any of the covenants, terms, conditions or provisions of this Agreement.

13.11 Language. The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

13.12 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be sent by registered or certified mail, return receipt requested, or by commercial courier, with a required copy by facsimile transmission to the Parties at the addresses set forth above on page 1 of this Agreement, or to such other person and place as either Party shall designate by notice to the other Party. The party sending notice shall obtain confirmation that all facsimile transmissions were sent to the facsimile telephone number set forth above on page 1 of this Agreement or such other facsimile telephone number as either Party shall designate by notice to the other Party, or, in the event that facsimile transmission is impossible due to problems on the receiving end, that attempts were made.

13.13 Assignments. Licensor has specifically chosen Licensee to commercialize Gelastic/DuraGel, Intelli-Gel, and Adjustable Shape Pillow in the Field of Use because of Licensor's belief in Licensee's technical abilities, managerial efficiency, marketing expertise and high standards of business ethics. Accordingly, Licensee shall not, and Licensee has neither the right nor the power to, assign the License or this Agreement to any other person or entity without the advance written consent of Licensor. In the event that Licensee or Licensor merges with any other entity, changes its name, or otherwise transforms into a new entity, this Agreement shall be deemed binding upon and enforceable against such new or other entity. Licensor may, at its sole option, assign its rights or obligations hereunder, provided that any third party beneficiaries or third party delegates agree in writing that each such assignment to which the third party beneficiaries or third party delegates are parties is subject to the

applicable terms and conditions of this Agreement.

13.14 Relationship. Neither Party is or shall be a partner, joint venturer, agent or representative of the other Party.

13.15 Insolvency and Receivership. If (i) Licensee becomes insolvent for any reason, (ii) a receiver is appointed for Licensee, (iii) Licensee files a petition for bankruptcy, or (iv) an involuntary petition for bankruptcy is filed for Licensee, then this Agreement shall be deemed executory and the License shall be deemed terminated. Licensors shall then be free to license the Technology Rights and the Trademark Rights to any other party on either an exclusive or nonexclusive basis, or to otherwise exploit the Technology Rights and the Trademark Rights, at Licensors's sole discretion.

13.16 Right of Cancellation. The Parties acknowledge that Licensee is entering into this license in part because of expectation of making a sales arrangement with a large customer. In the event that the sales arrangement with that customer for pillows is not finalized, Licensee shall have the right to cancel this Agreement ab initio. This Right of Cancellation is valid for ninety (90) days from the Effective Date of this Agreement.

13.17 Execution and Effective Date. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. The individuals signing below represent that they are duly authorized to do so by and on behalf of the Party for whom they are signing. When this Agreement has been executed by the duly authorized representatives of the Parties, it shall be effective as of the date of the last execution, and the Party performing such last execution shall insert the date of such last execution on the first page of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this License Agreement to be duly executed and entered into as of the date first above written.

LICENSEE:

By (signature):



Name (print):

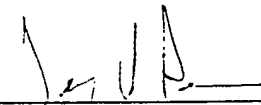
KEISUKE TANAKA

Title:

PRESIDENT

LICENSOR:

By (signature):



Name (print):

T. V. Pearce

Title:

Manager

File: ACT

Contract Original

Agreement

This license agreement ("Agreement") is entered into this 25TH day of January, 2002 and is by and between the following Parties:

LICENSOR: EdiZONE, LC
a Utah limited liability company
1250 So. Watkins Lane
Alpine, UT 84004
TEL: (801) 785-2767
FAX: (801) 785-2611

LICENSEE: Advanced Comfort Technology, Inc.
2749 Parley's Way, Suite 300
Salt Lake City, UT 84109
TEL: (801) 485-0266
FAX: (801) 474-0046

Recitals

WHEREAS, Licensor is the owner of certain Technology Rights and Trademark Rights (as defined in Paragraphs 1.1 and 1.2 below);

WHEREAS, Licensee wishes to obtain a license of the Technology Rights and the Trademark Rights on the terms and conditions set forth herein;

WHEREAS, Licensor desires to grant a license of the Technology Rights and the Trademark Rights to Licensee only on the terms and conditions set forth herein;

NOW, THEREFORE, the Parties agree as follows:

SECTION 1. - DEFINITIONS

1.1 Technology Rights. The following terms shall each have their respective defined meanings:

(a) Gelastic. The term "Gelastic" shall mean technology related to a particular elastomer gel owned by Licensor, including the gel itself, formulations for making the gel, methods for making the gel, products made from the gel and methods for making products from the gel as defined by U.S. Patent 5,994,450. Gelastic shall not be construed to mean "Goooz", which is a slow-rebound elastomer. Gelastic is included in the Licenses of this Agreement only insofar as its use in making Intelli-Gel, and nowhere in this Agreement shall non-Intelli-Gel applications of Gelastic be construed to be included in any License.

(b) Intelli-Gel™. The term "Intelli-Gel", which is sometimes also referred to

RLR *MM*

Gellycomb™, shall mean technology related to a cushioning structure owned by Licensor and made from elastomeric gel materials only as defined in this paragraph and having hollow buckling columns, including cushioning devices which incorporate the structure in any column structure pattern, products which incorporate the structure in any column structure pattern, and methods for making products which incorporate the structure in any column structure pattern as defined by U.S. patents 5,749,111 and 6,026,527. For purposes of this paragraph and by way of limitation of the License granted hereunder, elastomeric gel materials include Gelastic or other elastomeric gels which have substantially the same properties, but specifically excludes Goooz, foamed gels, gel-coated foams, or gel-coated objects (whether the gel coating is Gelastic or otherwise).

(c) Adjustable Shape Pillow. The term "Adjustable Shape Pillow" shall mean technology related to a bladder-containing pillow wherein the shape of the pillow is modified by means of adjusting the amount of air within a bladder contained within the pillow, including products which incorporate this technology, as defined in Licensor's pending U.S. patent application serial number 60/199,587 filed April 18, 2000. Adjustable Shape Pillow is included in the Licenses of this Agreement only insofar as its use in Intelli-Gel pillows, and nowhere in this Agreement shall non-Intelli-Gel applications of Adjustable Shape Pillow be construed to be included in any License. The Parties acknowledge that some of the features of the prototype bladders provided to Licensee by Licensor are the proprietary property of the maker of those bladders and not of Licensor.

(d) Trade Secrets. The Parties specifically acknowledge that Gelastic, Intelli-Gel and Adjustable Shape Pillow are held by and are protected by Licensor as trade secrets as defined in Utah Code Annotated § 13-24-1 *et seq.* The subject matter so held by Licensor is referred to herein as the "Trade Secrets."

(e) Know-How. "Know-How" shall mean information related to manufacturing, production and commercialization of Gelastic, Intelli-Gel and Adjustable Shape Pillow.

(f) United States Patent Rights. "United States Patent Rights" shall mean the applicable parts of one or more United States patent applications which Licensor has filed or may file in its efforts to secure United States patent protection for Gelastic, Intelli-Gel and Adjustable Shape Pillow and any and all issued patents, reissue patents, reexamined patents and corrected patents based on any of them.

(g) Foreign Patent Rights. "Foreign Patent Rights" shall mean the applicable parts of any and all foreign national patent applications which Licensor may file in its efforts to secure foreign patent protection for Gelastic, Intelli-Gel or Adjustable Shape Pillow, and any and all issued patents, reissue patents, reexamined patents and corrected patents based on any of them.

(h) Patent Rights. "Patent Rights" shall mean United States Patent Rights and Foreign Patent Rights collectively.

(i) Technology Rights. "Technology Rights" shall mean Gelastic, Intelli-Gel, Adjustable Shape Pillow, the Trade Secrets, Know-How and Patent Rights, collectively.

1.2 Trademark Rights. "Trademark Rights" shall mean all U.S. common law, federal and state trademark and service mark rights and all foreign trademark and service mark rights to the marks "GELASTIC", "INTELLI-GEL" and all variations of them which may be used to designate the source

or origin of Gelastic products and services or Intelli-Gel products and services. No rights are granted by Licensor to Licensee relating to the "ORTHOJUST" mark.

1.3 Information. During the performance of the terms of this Agreement, Licensee will learn highly sensitive, proprietary information owned by Licensor. The information may include inventions, trade secrets, information concerning or relating to Gelastic, Intelli-Gel or Adjustable Shape Pillow, designs, patent applications, formulas, processes, recipes, equipment, prototypes, models, mock-ups, samples, materials, manufacturing methods, business plans, marketing information, customer lists, forecasts and the like ("Information").

1.4 Confidential Information and Confidential Materials. "Confidential Information" means any and all Information disclosed by Licensor to Licensee. "Confidential Materials" means any tangible medium (paper, film, magnetic media, actual models, mock-ups, materials, samples, prototypes, etc.) containing or fabricated using Confidential Information. Confidential Information shall not include any information which (i) was in the public domain prior to the execution of this Agreement, or (ii) was already known by the Receiving Party, provided that this Paragraph 1.4(ii) is only applicable if within ten (10) days of disclosure of any Confidential Information of which the Receiving Party claims prior knowledge, the Receiving Party both notifies the providing Party in writing of such prior knowledge and provides the providing Party with documentary evidence showing such prior knowledge.

1.5 Geographic Region. The term "Geographic Region" shall mean the fifty states of the United States of America, Puerto Rico and Canada.

1.6 Licensed Field of Use.

(a) "Licensed Field of Use" shall mean consumer mattresses, mattress overlays and bed head pillows sold through non-medical-specialty consumer mattress distribution channels, including but not limited to retail stores other than medical product specialty stores, the Internet, catalogs distributed generally to consumers, television shopping channels, direct mail to consumers, and magazines other than medical industry trade magazines. It is acceptable to make medical claims about the products, and to have doctors and chiropractors recommend that patients purchase a mattress or overlay or pillow, so long as the mattress or overlay or pillow are not sold in medical specialty channels as described in paragraph 1.6(b) of this Agreement.

(b) The following product areas are specifically excluded from the Licensed Field of Use, though this is not an indication of all excluded products: (i) Mattresses, mattress overlays and pillows for medical beds (acute care, long term care, and home health care), operating tables, stretchers and gurneys; positioning and heating or cooling pads for surgery; and medical devices intended for relief or reduction of pressure and shear on tissue while lying down or while sitting in a medical bed (e.g., heel protectors) including human and veterinary products; (ii) all wheelchair related products; and (iii) all products distributed through medical channels ("medical channels" shall mean the following: DME dealers, specialty medical dealers, general line medical distributors, medical products catalogs and direct sales to medical care facilities).

1.7 Reserved Fields of Use. "Reserved Fields of Use" shall mean all fields of use not

expressly recited in the Licensed Field of Use.

1.8 Licensed Product. "Licensed Product" shall mean any product or service which embodies or is made using Gelastic, Intelli-Gel or Adjustable Shape Pillow and which subsists within the Licensed Field of Use.

1.9 Customer. "Customer" shall be any third party that acquires possession of a Licensed Product from Licensee directly or indirectly (whether by purchase, rental, lease or otherwise), or receives a service performed by Licensee using a Licensed Product.

SECTION 2 - THE LICENSES

2.1 Technology License. Subject to and on the terms and conditions contained herein, especially but not limited to the Reserved Technology License of Paragraph 2.2 below, Licensor hereby grants to Licensee, and Licensee hereby accepts, an exclusive license of the Technology Rights to make, use, and sell Licensed Products in the Geographic Region. This license is referred to in this Agreement as the "Technology License." To the extent that the Technology License terminates or is terminated for a particular market, jurisdiction or country under this Agreement, Licensee shall not make, use or sell any Licensed Product in such country or region in which the License terminates or is terminated, and Licensor shall be permitted to market and sell or license the Technology Rights, and to manufacture, market and sell products using the Technology Rights to third parties in such country or region. The exclusivity of the Technology License shall apply to marketing and selling in full, and to manufacturing except as described in the next sentence. In the event that Licensor or its third party licensee desires to have products which are described by the Technology Rights manufactured in whole or in part within the Geographic Region for marketing and sales outside the Geographic Region, Licensor or its third part licensee shall have the right to do so provided the manufacturer agrees in writing that the product will not be made for any purposes which violate this Agreement. In the event that the Licensee desires to have the product manufactured in whole or in part in an area outside the Geographic Region, Licensee shall have the right to do so with the written permission of Licensor, which shall not be unreasonably withheld. Licensee specifically agrees not to market products using the Technology Rights outside the Geographic Region.

2.2 Reserved Technology License. Licensor reserves for itself the right to make and use Licensed Product for the purposes of Licensor's further testing and development of Gelastic, Intelli-Gel and Adjustable Shape Pillow. Licensor also reserves for itself the right to engage in any activities whatsoever with respect to Gelastic, Intelli-Gel and Adjustable Shape Pillow in the Reserved Fields of Use. This is collectively referred to in this Agreement as the "Reserved Technology License." Notwithstanding the Reserved Technology License, Licensor shall have no obligation to further test, develop or improve Gelastic, Intelli-Gel and Adjustable Shape Pillow.

2.3 Trademark License. Subject to and on the terms and conditions contained herein, especially but not limited to the Reserved Trademark License of Paragraph 2.4 below, Licensor hereby grants to Licensee, and Licensee hereby accepts, a non-exclusive license of the Trademark Rights for the limited purpose of designating the source or origin of Licensed Products and services performed using Licensed Products. This is referred to in this Agreement as the "Trademark License."

2.4 Reserved Trademark License. Licensor reserves for itself the right to exploit the

Trademark Rights in any manner that is not in direct conflict with the Trademark License.

2.5 The License. As used herein, "License" shall mean the Technology License and the Trademark License collectively.

2.6 No Sublicense without Consent. Licensors has specifically chosen Licensee to commercialize Gelastic, Intelli-Gel and Adjustable Shape Pillow in the Field of Use because of Licensors belief in Licensee's technical abilities, managerial efficiency, marketing expertise and high standards of business ethics. Accordingly, Licensee shall not, and Licensee has neither the right nor the power to, grant any sublicense under the License to any third party with the exception of wholly owned subsidiaries of Licensee without the advance written consent of Licensors. No party other than Licensee and its wholly owned subsidiaries has the right to exploit the License or any portion thereof.

2.7 Reservations. Rights not expressly granted to Licensee under this Agreement or the License are reserved by Licensors. No part of this Agreement shall be interpreted to prevent Licensors from engaging in any activities that do not directly conflict with any obligation of Licensors under this Agreement.

SECTION 3 - TECHNOLOGY RIGHTS AND CONSULTATION

3.1 Gelastic, Intelli-Gel and Adjustable Shape Pillow Formulations and Processes. Not later than ten (10) business days after Licensee's payment of the License Issue Fee (defined in Paragraph 4.1 below) to Licensors and Licensee's written request for formulations and processes, Licensors shall provide Licensee with the formulations of Gelastic and the manufacturing processes for Gelastic, Intelli-Gel and Adjustable Shape Pillow which Licensors believes to be best suited for the Licensed Products. From time to time, at Licensors's own initiative or at Licensee's request, Licensors may provide Licensee with updates concerning Gelastic formulations and manufacturing processes for Gelastic, Intelli-Gel and Adjustable Shape Pillow to the extent the Gelastic, Intelli-Gel and Adjustable Shape Pillow formulations or processes have been improved. Licensee shall only use Gelastic and other gel formulations provided or approved by Licensors in Licensee's Intelli-Gel products.

3.2 Questions and Consultation. Licensee may contact Licensors from time to time with questions about Gelastic, Intelli-Gel and Adjustable Shape Pillow and Licensors shall attempt to answer those questions. However, if Licensee wishes for Licensors to engage in any research, development, testing or evaluation work concerning Gelastic, Intelli-Gel or Adjustable Shape Pillow, Licensee may propose a project to Licensors and Licensors shall respond to Licensee's proposal as Licensors sees fit in a timely manner.

SECTION 4 - CONSIDERATION

4.1 License Issue Fee. In consideration for grant of the License, Licensee shall pay to Licensors a License Issue Fee of ten dollars (\$10.00), payable within five (5) calendar days of executing this Agreement. The entire License Issue Fee shall be deemed earned when paid and shall be completely non-refundable. The License shall only take effect upon Licensee's timely receipt of the License Issue Fee.

4.2 Royalty. Licensee shall pay to Licensor a "Royalty" equal to eight percent (8.00%) of the Net Sales of each Licensed Product sold, rented, leased, or otherwise transferred or used during the Term of the License, except that in the case of mattress overlays and mattresses, the Royalty shall be five percent (5.00%) prior to Licensee's achieving second round investment of five hundred thousand dollars (\$500,000.00) or August 1st, 2002, whichever is sooner (the "Invested Date") and eight percent (8.00%) after the Invested Date. The Royalty shall be in addition to the License Issue Fee and shall not be offset by the License Issue Fee. The triggering event for the payment of the Royalty shall be the earliest of shipment of a Licensed Product by Licensee, the performance of a service using a Licensed Product, preparation of an invoice related to a Licensed Product or an associated service, or use or transfer of a Licensed Product.

4.3 Royalty Reduction. The License includes a complete package of potentially valuable technical information and legal rights for which Licensee is ready, willing and able to pay the License Issue Fee, the Royalty, and other payments and consideration due under this Agreement. Licensee and Licensor have considered, that at some point in time, there may cease to be patent claims or pending patent claims anywhere in the world that cover the Technology Rights or any portion of any of them. In that event, Licensor and Licensee agree that a Royalty should still be payable for the Technology Rights, but that a reduction in Royalty may be appropriate. Accordingly, the Royalty shall be reduced by 0.25% for all Royalties which accrue during any calendar quarter in which no patent claim or pending patent claim covers the Technology Rights or any portion of either of them for the entire calendar quarter.

4.4 Grant Back License of Improvements. In further consideration for the License, Licensee agrees to grant a non-exclusive license (the "Grant Back License") to Licensor of all improvements, modifications, extensions and applications of the Technology Rights and any portion thereof conceived, owned or licensed by Licensee, its successors, assigns, employees and contractors, etc. during the Term of this Agreement. The Grant Back License shall cover all fields of use. Licensee shall promptly disclose to Licensor all improvements, modifications, extensions and applications of the Technology Rights both orally and in writing.

4.5 Payments. All references in this Agreement to dollars or \$ shall mean dollars of the United States of America. All payments to Licensor shall be made in United States dollars. Licensee shall pay Licensor all Royalties due hereunder on a monthly basis. The Royalty payment for a given calendar month shall be made within thirty (30) days of the end of the calendar month in which the Royalty accrued. All payments due under this Agreement shall be paid by check to Licensor at the address shown on page 1 of this Agreement, or to any other person or entity which Licensor may designate to receive payments.

4.6 Reports. Within thirty (30) days following the end of each month, Licensee shall provide Licensor with a written report showing sales in such month and the amount of Royalty payable with respect thereto. Such reports shall include the following information: (a) the number of units of each type of Licensed Product sold, rented or leased, (b) Net Sales from (a), and (c) Royalty payable. A report of the type required under this Paragraph shall accompany each Royalty payment submitted to Licensor, or shall be sent without a Royalty payment if no Royalty payment is due for the month. Within thirty (30) days following the end of each calendar year, Licensee shall provide Licensor with a written, good faith forecast of Net Sales for the next five years. Such forecasts shall merely be projections of future sales and are not binding.

4.7 Overdue Payments. In the event Licensee fails to pay any amount when due hereunder, such amount shall bear interest at the rate of eighteen percent (18%) compounded monthly until the date when such amount is paid in full.

4.8 Non-Refundability of Payments. All payments made to Licensor by Licensee under this Agreement are made in consideration of Licensor disclosing potentially valuable Trade Secrets to Licensee, providing Licensee with a potential competitive advantage in the marketplace, granting the Technology License and the Trademark License, Licensee's efforts to date in securing patent protection that may benefit Licensee and otherwise potentially enhancing Licensee's competitive position through performance of this Agreement. Accordingly, the Parties deem all payments made hereunder to be earned when paid and to be completely non-refundable.

SECTION 5 - LICENSEE PERFORMANCE CRITERIA

5.1 Minimum Royalty Payments. Licensor has elected to grant Licensee an exclusive License because of Licensor's belief in Licensee's ability to successfully commercialize Gelastic, Intelli-Gel and Adjustable Shape Pillow in the Licensed Field of Use. In order to ensure Licensor that Licensee's commercialization of Gelastic, Intelli-Gel and Adjustable Shape Pillow will be successful and that certain minimum royalty payments will be made by Licensee to Licensor, Licensee and Licensor have agreed upon a schedule of minimum royalty payments. As detailed in Paragraph 5.4, it is the intention of Licensor and Licensee that the Technology License only remain in force if Licensee makes minimum royalty payments in accordance with the schedule shown in Paragraph 5.2 below.

5.2 Minimum Royalty. A quarterly "Minimum Royalty" shall become payable by Licensee to Licensor on a calendar quarterly basis during the Term of the Agreement. The first Minimum Royalty shall be paid to Licensor within thirty (30) days following the end of the calendar quarter ending March 31, 2002. A Minimum Royalty shall then be payable from Licensee to Licensor each quarter throughout the Term of the Agreement. In the event that monthly Royalties payable in any calendar quarter do not reach the minimum amount set out below for such quarter, Licensee shall pay the Minimum Royalty set forth below on or before the due date of the monthly payment for the third month of that quarter. If the Royalty for the quarter exceeds the Minimum Royalty, Licensee shall pay the Royalty.

Mattress Overlays:

2002:	Five thousand dollars (\$5,000.00) per quarter
2003:	Ten thousand dollars (\$10,000.00) per quarter
2004 and thereafter:	Fifteen thousand dollars (\$15,000.00) per quarter

Mattresses:

2002:	Zero dollars (\$0.00) per quarter
2003:	Zero dollars (\$0.00) per quarter
2004:	Twenty five thousand dollars (\$25,000.00) per quarter
2005:	Fifty thousand dollars (\$50,000.00) per quarter
2006 and thereafter:	Seventy five thousand dollars (\$75,000.00) per quarter

Pillows:

2002:	Ten thousand dollars (\$10,000.00) per quarter (except that the first
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quarter ending March 31, 2002 is zero dollars [\$0.00])
2003: Twenty thousand dollars (\$20,000.00) per quarter
2004 and thereafter Thirty thousand dollars (\$30,000.00) per quarter

5.3 Royalty Payments in Excess of Minimum Royalty. No Royalties paid, whether above, below, or equal to the Minimum Royalty, are to be considered an advance or credit against any Royalty (whether the Minimum Royalty or otherwise) which is due at any future date.

SECTION 6 - RESEARCH AND DEVELOPMENT SERVICES

6.1 R&D Services. At any time during the Term of the License, Licensee may request Licensor to perform various research and development projects as directed by Licensee (the "R&D Services"). The R&D Services may include, without limitation, conceptual design, human factors analysis, product design, materials selection, materials analysis, materials testing, mold design, mold and tool making, prototype construction, manufacturing process and manufacturing system design, manufacturing system implementation, other production gear-up services, etc.

6.2 Project Scope and Direction. In the event Licensee desires Licensor to perform R&D Services, Licensee shall provide reasonable detailed research and development assignments to Licensor, scheduling and priority information, ongoing communication and review concerning the nature and direction of the R&D Services, and any other information reasonably requested by Licensor in conjunction with the R&D Services.

6.3 Utilization of R&D Services. R&D Services shall be performed at Licensor's Standard Rates (defined in Paragraph 6.4 below). All R&D Services must be authorized by Licensee and accepted by Licensor, at the sole discretion of each, and either Licensee or Licensor may terminate R&D Services on any project at any time (which shall not terminate the obligation of payment for services rendered to date). Neither Licensor nor Licensee is obligated to begin any particular project. All R&D Services will be performed on a best reasonable efforts basis, with no guarantee of a particular outcome or result.

6.4 Standard Rates. Licensor's Standard Rates for R&D Services are determined as follows: "Direct Labor", defined as the wages paid or allocated to Licensor's employees, temporary employees, in-house job shoppers, owners, and others acting as or under the direct supervision of Licensor's managers, including benefits and employment taxes except bonuses and retirement plans; plus an overhead burden factor of two (2.00) times Direct Labor; plus outside materials, subcontracts and other outside expenses marked up fifteen percent (15%) as an overhead factor; and then-current standard hourly rates for equipment usage (e.g., CNC milling machines, extruders, injection molding machines, rotational molding machines, and other equipment and machinery). Owners of Licensor reserve the right to forego a personal wage and allocate a wage level which shall be invoicable to Licensee as though it were a normal wage. The time of Licensor's accountants and clerical employees shall not be billed to Licensee unless Licensee makes requests for Licensee-specific accounting or clerical services. General management of Licensor and its employees shall not be billed to Licensee; however, direct project management of any R&D Services by Licensor's management, including internal meeting and meetings with Licensee, shall be billed. Licensor's Standard Rates as set forth in this paragraph are subject to change by thirty (30) calendar days' written notice from Licensor to Licensee.

6.5 Access to Facilities and Personnel. During any time that R&D Services under this Agreement are being performed, Licensor shall provide Licensee with access to: (i) all facilities owned or controlled by Licensor to the extent such facilities are being utilized in relation to R&D Services, and (ii) all personnel who participate in providing R&D Services to Licensee. Such access shall be at reasonable times, shall not be so frequent as to disrupt the business operations of Licensor, and shall be subject to reasonable advance notice as required by Licensor to allow Licensor to protect the confidential nature of products and services it may be performing for itself or other parties. Licensee shall pay Licensor's Standard Rates for Licensor's time in support of such access.

6.6 Rights in R&D Work Product. All right, title and interests in and to any intellectual property developed during Licensor's performance of R&D Services hereunder, including without limitation improvements, modifications, extensions and applications of the Technology Rights or any portion thereof shall be held by Licensor. Intellectual property developed during and as a direct result of Licensor's performance of R&D Services hereunder shall be included in the Technology License insofar as it applies to the Licensed Field of Use, and shall be subject to the terms of this Agreement. In the event that R&D Services result in products which are not Licensed Products and for which Licensor did not develop new intellectual property, the License and this Agreement shall be extended to cover such new products, but the royalty shall be reduced to four percent (4%) of Net Sales, unless agreed otherwise in writing by the Parties.

6.7 Payments. Licensee shall pay all R&D Services amounts within ten (10) calendar days of receiving an invoice from Licensor. Invoices may be submitted for work to date, and project completion need not have occurred. For any amounts unpaid after ten (10) days, Licensee will be charged interest at a rate of eighteen percent (18%) annually, compounded monthly. At Licensor's sole discretion, Licensor may require full or partial payments in advance of work being performed.

SECTION 7 - CONFIDENTIALITY

7.1 Protection. Licensee shall not disclose, transfer or offer to disclose or transfer any Confidential Information or Confidential Materials to any other person or entity, including without limitation any of Licensee's employees who do not have a legitimate need to know any Confidential Information or utilize any Confidential Materials. Licensee may only disclose, transfer, or offer to disclose or transfer any Confidential Information or Confidential Materials to those of its employees with a legitimate need to know any Confidential Information or utilize any Confidential Materials, and then only to those employees who are bound by the confidentiality terms of this Agreement. Licensee shall not use Confidential Information except for the purpose described in Paragraph 7.2. Licensee shall take all reasonable precautions to ensure against any disclosure, transfer or use of Confidential Information or Confidential Materials not specifically authorized by Licensor in writing. In the event that Licensee desires to use a subcontractor for manufacturing Licensed Products and that subcontractor will have access to Confidential Information, that subcontractor must be approved by Licensor, which approval shall not unreasonably be withheld, and that subcontractor must sign confidentiality agreements with Licensee and Licensor separately, which agreements must fulfill all of the intents and purposes of this Section 7.

7.2 Purpose. Licensee may only use the Confidential Information and Confidential Materials for the purpose of commercially exploiting the License within the terms and conditions set

forth in this Agreement.

7.3 Exception. To the extent that Confidential Information or a portion thereof becomes part of the public domain after the execution of this Agreement, and through no fault or action of Licensee, then as of the date that such Confidential Information becomes part of the public domain, this Section 7 shall prospectively cease to cover such Confidential Information, although this Section 7 shall remain enforceable prospectively with respect to any Confidential Information which has not entered the public domain and this Section 7 shall remain enforceable retrospectively with respect to any Confidential Information that was covered by it on any prior date.

7.4 Disclosure Concerning Existence of this Agreement. The Parties shall be permitted to disclose the existence of this Agreement and the general nature of the terms of this Agreement. Particularly, but not by way of limitation, the Licensed Field of Use may be disclosed by Licenser to other prospective licensees of the Technology Rights so as to ensure complete understanding by the prospective licensee of fields of use that remain available for license.

SECTION 8 - OWNERSHIP, RESPONSIBILITY ETC.

8.1 Ownership. Nothing in this Agreement assigns or transfers to Licensee ownership of the Technology Rights, the Trademark Rights or any portion thereof. Licenser shall hold title to, and be the worldwide owner of, the Technology Rights and the Trademark Rights, and Licensee shall be an exclusive licensee of the Technology Rights in the Licensed Field of Use and a non-exclusive licensee of the Trademark Rights per the provisions of this Agreement. Licensee shall not patent or attempt to patent Gelastic, Intelli-Gel or Adjustable Shape Pillow or any variation, modification or improvement thereof, without prior written permission from Licenser.

8.2 Responsibility for Patents, Trademarks, Etc. Licenser shall solely control and make all decisions relating to the filing, prosecution, issuance, maintenance, abandonment, defense, etc. of all aspects of the Technology Rights and the Trademark Rights. Notwithstanding the foregoing, Licenser shall duly consider any and all input provided by Licensee concerning the Technology Rights and the Trademark Rights. Any intellectual property work done by Licenser at the specific request of Licensee shall be billed to Licensee at Licenser's Standard Rates for R&D Services, and Licenser shall periodically provide Licensee with statements showing the amount owed by Licensee under this Paragraph, and Licensee shall provide Licenser with a check for reimbursement within thirty (30) days of receiving any statement. The foregoing sentence does not apply to intellectual property work done at the discretion of Licenser, which is addressed in paragraph 8.3 below.

8.3 Infringement, Enforcement and Defense of Patent Rights. If Licensee learns of any activity that may constitute infringement of or threat to any of the Technology Rights or the Trademark Rights, Licensee shall immediately inform Licenser of the facts surrounding such suspected infringement or threat. The Parties recognize that it may be in the best interests of both Parties to cooperate in any settlement discussions and lawsuits, and the Parties agree to negotiate in good faith concerning such cooperation within thirty (30) days of Licensee's notification to Licenser of such infringement. The negotiation shall include such items as the sharing of costs and the sharing of awards or settlement payments. In the event that the negotiations fail, Licenser may, in its sole discretion, take any action that it deems appropriate (including no action) concerning such suspected infringement or threat. If Licenser gains any monetary recovery from the suspected infringer, Licenser may use and

dispose of such monetary recovery as it deems appropriate. If, one (1) year after learning of activity constituting infringement of the Technology Rights or the Trademark Rights, Licensor has not filed suit against the infringer, then Licensee may bring suit against the infringer at its own expense in Licensor's name. If Licensee gains any monetary recovery as a result of such a suit, Licensee shall keep all recovery attributable to provable costs and damages to Licensee and pay one-half of any recovery over and above such damages to Licensor. For any suit brought by Licensee, Licensee shall fully and completely indemnify and hold harmless Licensor from any and all counterclaims, demands, sanctions, judgments, damages, settlements, fines, attorney's fees, lost income, costs, interest and other expenses incurred by Licensor related to such suit.

8.4 Cooperation. In any proceeding concerning procurement, enforcement or defense of the Technology Rights or the Trademark Rights, or any portion thereof, the Parties shall cooperate with and assist each other in such proceeding including making witnesses available to testify in person and by affidavit, making documents available and otherwise providing reasonable cooperation. This Paragraph shall not be construed as requiring either Party to make any statement or representation that the Party believes to be inaccurate, false or incomplete. In the event that such cooperation is at the request of one party acting in the proceeding by its own choice and at its own expense, and such cooperation becomes material in cost to the cooperating party, the requesting party shall reimburse such costs, including lost time.

8.5 Patent Marking. To the extent that Licensor secures any patents for Gelastic, Intelli-Gel or Adjustable Shape Pillow, Licensor shall inform Licensee of appropriate patent marking to be placed on Licensed Products and their packaging, and Licensee shall utilize such marking. Even without such notification, Licensor shall appropriately mark the Licensed Products or their packaging with the current patent and patent pending status (for example, "Protected by U.S. Patents 5,749,111, 5,994,450, 6,026,527 and other U.S. and International Patents Pending").

8.6 Quality Control. Licensee agrees to use the appropriate trademarks legibly in all advertising, literature, and packaging associated with Licensed Products. Any reference to the licensed materials must use the terms Gelastic and Intelli-Gel and may not use another mark or name of Licensee's choosing without written permission of Licensor at Licensor's sole discretion, and must indicate that the Gelastic and Intelli-Gel trademarks belong to Licensor and identify Licensor's city and state. In order for Licensor to maintain its Trademark Rights, it is necessary for Licensor to monitor the quality of Licensed Products to ensure that they conform to the quality of goods that Gelastic and Intelli-Gel are used to identify. Accordingly, and for any and all other purposes of Licensee, for each SKU number (or equivalent) that Licensee establishes for Licensed Products, Licensee shall provide Licensor with at least one (1) product free of charge on a yearly basis. Licensor may then review the quality of those Licensed Products and provide any input to Licensee regarding quality control as may be appropriate. Licensee shall take such input into consideration and shall make good faith efforts to remedy quality control problems identified by Licensor. Licensor shall then be free to use all of the Licensed Products provided pursuant to this Paragraph as it sees fit, except Licensor shall not sell or rent such Licensed Products in the Field of Use.

SECTION 9 - RECORDKEEPING AND AUDITS

9.1 Record Keeping. Licensee shall keep detailed and complete records of all Licensed Products manufactured; to whom such Licensed Products were sold, rented, leased or otherwise

delivered (including quantities, price, date and location of sale, rental, lease or delivery); inventories of Licensed Products ready for sale; and services performed using Licensed Products. Licensee shall keep paper copies of all such records, including all underlying documentation, which shall include but is not limited to purchase orders and invoices for a minimum of five (5) years from the date of creation of a particular record.

9.2 Examinations and Audits. Upon the written request of Licensor and, except as otherwise provided below, at Licensor's expense (provided that Licensor shall not be required to reimburse Licensee for any time, use of facilities or out-of-pocket costs associated with an examination or audit), Licensee shall allow its books and records to be audited by any person or persons of Licensor's choosing so that Licensor can verify that Licensee is properly paying Royalties. For an examination or audit, Licensee shall allow a full examination and audit of its books and records relating to manufacturing, marketing, sales, rentals and leases of Licensed Products and performance of services using Licensed Products, including books and records regarding quantities, sizes, prices, sales, purchase orders, invoices, supply contracts, rental agreements, lease agreements, service contracts, entities purchasing, renting or leasing Licensed Products, locations to which Licensed Products have been delivered, and related documents and information, for all Licensed Products manufactured, sold, lost, destroyed, given away, in inventory or used to perform a service. Such examinations and audits shall be conducted during reasonable times and with reasonable advance notice, so as to minimize interference with Licensee's business operations, for the purpose of determining Licensee's compliance with its Royalty obligations and other obligations under this Agreement. In any event, Licensee may not delay an examination or audit more than ten (10) business days from the date of Licensor's written request. In the event that an examination or audit shows that Royalties actually paid for any period were less than ninety-eight percent (98%) of the amount properly payable, Licensee shall pay all costs and expenses incurred by Licensor in connection with the examination or audit. Licensee shall pay to Licensor all previously unpaid Royalties, as determined by such examination or audit, within thirty (30) days following the conclusion of such examination or audit. For each calendar or fiscal year in which Licensee performs its own annual audit or has an annual audit performed by outside accountants, Licensee shall require the accountants performing such audit to provide Licensee with a written statement indicating whether the payments due under this agreement have been duly paid to Licensor, and if not, the amount of discrepancy between the amount payable under this Agreement and the amount actually paid. Within thirty (30) days following the conclusion of such audit, Licensee shall pay Licensor any deficiency as indicated by such accountants.

SECTION 10 - INSURANCE

10.1 Insurance. Beginning no later than the date on which Licensee sells, rents, leases, transfers or uses the first Licensed Product or performs a service using a Licensed Product and continuing during the entire period of time during which Licensee sells, rents, leases, transfers or uses Licensed Product or performs services using Licensed Products, Licensee shall acquire and maintain a standard product liability insurance policy in the amount of at least One Million Dollars (\$1,000,000.00) which expressly names Licensor as an additional named insured.

SECTION 11 - WARRANTIES, DISCLAIMERS, ETC.

11.1 DISCLAIMERS. LICENSOR MAKES NO WARRANTIES, EXPRESS,

IMPLIED OR STATUTORY THAT ARE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT WITH RESPECT TO THE TECHNOLOGY RIGHTS, THE TRADEMARK RIGHTS OR THE LICENSED PRODUCTS. THE TECHNOLOGY RIGHTS AND THE TRADEMARK RIGHTS ARE MADE AVAILABLE TO LICENSEE STRICTLY ON AN "AS IS" BASIS. LICENSOR DOES NOT WARRANT THAT THE TECHNOLOGY RIGHTS HAVE UTILITY, ARE ERROR FREE, ARE SAFE, ARE RELIABLE, THAT THEY WILL MEET LICENSEE'S REQUIREMENTS, OR THAT ANY PART OF THEM ARE PATENTABLE OR THAT THE PATENTS WILL BE VALID WHEN GRANTED OR THAT THE EXPLOITATION OF THE TECHNOLOGY RIGHTS OR THE TRADEMARK RIGHTS OR COMMERCIALIZING LICENSED PRODUCTS WILL NOT INFRINGE ANY EXISTING OR FUTURE PATENT, TRADEMARK OR OTHER LEGAL RIGHTS OF ANY OTHER PERSON OR ENTITY. THE PARTIES ACKNOWLEDGE THAT THERE IS CONSIDERABLE PRIOR ART IN THE FIELD OF ELASTOMER GELS, AND WHILE GELASTIC IS THOUGHT TO BE UNIQUE DUE TO ITS ADDITIVES, PROCESSING TECHNIQUES, AND USES, PARTICULARLY IN INTELLI-GEL, THE BASIS PREMISE OF GELASTIC HAS BEEN DISCLOSED IN PATENTS MORE THAN TWENTY YEARS OLD. ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT ARE EXPRESSLY DISCLAIMED AND EXCLUDED. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE TECHNOLOGY RIGHTS, THE TRADEMARK RIGHTS AND THE LICENSED PRODUCTS IS ASSUMED BY LICENSEE.

11.2 REPRESENTATIONS OF LICENSEE. LICENSEE REPRESENTS AND WARRANTS ONLY THAT: (A) IT HAS THE RIGHT, ABILITY AND INTENTION TO ENTER INTO THIS AGREEMENT AND PERFORM ITS OBLIGATIONS HEREUNDER; AND (B) IT HAS EXECUTED NO OTHER AGREEMENT IN CONFLICT WITH THIS AGREEMENT.

11.3 LIMITATION ON LIABILITY. LICENSOR SHALL NOT BE LIABLE FOR ANY LIABILITY, CLAIM, LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED DIRECTLY OR INDIRECTLY BY ANY INADEQUACY, DEFICIENCY, OR UNSUITABILITY OF THE TECHNOLOGY RIGHTS, THE TRADEMARK RIGHTS OR THE LICENSED PRODUCTS. IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO, LOSS OF INVESTMENT, LOSS OF ANTICIPATED PROFITS, OR OTHER ECONOMIC LOSS) EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

11.4 Indemnification - Licensee. Licensee assumes all responsibility and liability for the manufacturing, marketing, distribution, sale, rental, lease, use, performance of services, practice and commercial exploitation of the Licensed Products, and for exercise of the Technology Rights. Licensee shall fully and completely indemnify Licensor against, and hold it harmless from, any and all claims, threats of litigation, causes of action and demands relating to the Licensed Products or their manufacture, marketing, distribution, sale, rental, lease, use, practice or commercial exploitation based on any conduct of Licensee and Customers, including exploitation of the License and any breach of this Agreement by Licensee. Without limiting the generality of the foregoing, Licensee shall defend and hold Licensor harmless on account of, and shall indemnify Licensor against any and all claims, suits, demands, and causes of action of any type or kind whatsoever which may be made against Licensor by any person, firm or corporation on account of injuries to or death of persons or damage to property or

loss of income occurring as a result of or in any way arising out of Licensee's or Customers' manufacture, use, rental, lease or sale or performance of a service, regardless of: (a) whether said claims are based upon the negligent production, use, distribution, or other negligence of Licensor, Licensee or a Customer; (b) whether the same are based upon any express or implied warranty by Licensor, Licensee or a Customer in connection with the production, distribution, rental, lease or use of the Licensed Products or performance of a service using Licensed Products; (c) the location of the court or other place where such claim, suit, demand or cause of action may be made or exist; or (d) whether such claim, suit, demand or cause of action is litigated, settled, arbitrated, mediated or otherwise resolved. Such indemnification shall include any judgments, damages, settlements, fines, attorney's fees, lost income, costs, interest and other expenses incurred as a result of such claims, actions, demands or threats. Licensee shall have the right to settle all claims, actions, demands or threats for which it has agreed to indemnify Licensor without the advance consent of Licensor provided that any such settlement is fully paid by Licensee, such settlement requires no action by Licensor whatsoever either in its execution or enforcement, and such settlement does not in any way restrict or limit Licensor other than Licensor's right to contest such claim, counterclaim, action or demand.

11.5 Allocation of Risk. This Agreement generally (and this Section 11 in particular) represents a mutually agreed upon allocation of risk between the Parties and the consideration given hereunder reflects such allocation of risk.

SECTION 12 - TERM AND TERMINATION

12.1 Term. Subject to the exceptions below, the term of the License for each region of the Geographic Region in which the License is applicable shall begin on the date that Licensor receives the License Issue Fee in full from Licensee and shall continue perpetually unless terminated for any or all regions of the Geographic Region pursuant to the terms of this Agreement. The License shall not terminate before expiration of such Term except:

- (a) by the mutual written consent of the Parties, or
- (b) as provided in Paragraph 12.2 below, or
- (c) as provided in Paragraph 12.3 below, or
- (d) if Licensee fails to timely obtain and maintain insurance as specified in Paragraph 10.1 above, or
- (e) if Licensee fails to pay any money due under this Agreement, or
- (f) if Licensee initiates or directly or indirectly participates in any proceeding or litigation which seeks a ruling of invalidity or unenforceability of the Technology Rights or any portion thereof, cancellation or limitation of the Trademark Rights or any portion thereof, or any other proceeding or adjudication concerning the Technology Rights or the Trademark Rights which Licensor considers adverse to its interests, unless such initiation or participation is pursuant to Licensor's written instructions, with the caveat that nothing in this Agreement shall be construed as prohibiting or limiting Licensee's participation in any such proceeding; the

consequence of such participation which is not pursuant to Licensor's written instructions, however, shall be automatic and immediate termination of the License without any notice from Licensor being required to effect such termination, or

(g) if Licensee initiates or directly or indirectly participates in any reexamination proceeding concerning the Patent Rights or any portion thereof, including but not limited to citing prior art to any patent office in any country of the world, unless such initiation or participation is pursuant to Licensor's written instructions, with the caveat that nothing in this Agreement shall be construed as prohibiting or limiting Licensee's participation in any such proceeding; the consequence of such participation which is not pursuant to Licensee's written instructions, however, shall be automatic and immediate termination of the License without any notice from Licensor being required to effect such termination, or

(h) if Licensee attempts to grant or purports to grant a sublicense under the License or any portion thereof without first obtaining the written permission of Licensor.

12.2 Termination at the Will of Licensee. Licensee may terminate the License for any region of or for all of Geographic Region by providing Licensor with at least six (6) months' prior written notice of termination. Termination shall be effective on the date specified by Licensee in such notice, but not sooner than six (6) months if the entire Geographic Region is terminated. If no date is specified in such notice, then termination shall be effective six (6) months following the date of such notice if the termination is for the entire Geographic Region not previously terminated and ten (10) days if the termination is for only a portion of the Geographic Region not previously terminated. If the notice does not specify which regions of the Geographic Region for which the License is being terminated, the termination shall be effective for the entire Geographic Region.

12.3 Breach. If Licensee breaches any term of this Agreement and fails to cure such breach within thirty (30) days of receiving notice of breach from Licensor, then Licensor may terminate the License by providing written notice of termination to Licensee. If Licensee repeats a type of breach after it has been cured (e.g., failure to make a monetary payment on time), the breach shall be deemed incurable and Licensor shall then have the right to terminate the License at any time by providing written notice of termination to Licensee. In the event Licensor provides Licensee with a notice of termination of the License, the License shall terminate on the date specified in the notice, and if no date is specified in the notice, the License shall terminate ten (10) days from the date of the notice.

12.4 Effect of Termination. Upon the termination of the License for any particular region or for the entire Geographic Region:

(i) Licensee shall immediately cease making, using and selling Licensed Product and performing services using Licensed Product in the region(s) of the Geographic Region for which the License has terminated,

(ii) if the License has terminated for all regions of the Geographic Region, Licensee shall also immediately return all Confidential Materials to Licensee, and

(iii) Licensor shall not have any further obligation or liability under this Agreement with respect to such region(s) of the Geographic Region in which the License is terminated.

Notwithstanding any such termination of the License, nothing herein shall relieve Licensee of its obligations to pay Royalties or other payments that accrue prior to termination, or to fulfill its obligations under Sections 4, 5, 6, 7, 8, 9, 10, 11, 12 or elsewhere in this Agreement. Further notwithstanding any such termination of the License, Licensed Product on which all money due under this Agreement have already been paid to Licensors may be sold without further permission from Licensors, provided such sale occurs within six (6) months of termination.

12.5 Right of Reversion. 12.5 In the event that Licensee has not raised at least \$500,000 in investment capital on or before December 31, 2002, Licensors may at its sole discretion terminate the License at will unless Licensee has achieved either (1) sustained gross monthly revenue of at least five hundred thousand dollars (\$500,000.00); or (2) a market capitalization (defined as the number of shares outstanding multiplied by the price per share of Licensee's common stock as quoted on the OTC Bulletin Board or other exchange) of at least ten million dollars (\$10,000,000.00); if the License is terminated in accordance with this sentence, all Parties agree that the Agreement between RK Industries and Licensors dated 31 May 2000 and the license granted thereunder shall be automatically reinstated in its entirety beginning as of the date the License is terminated.

SECTION 13 - OTHER PROVISIONS

13.1 Purchase of Licensed Products by Licensors. At any time during the term of the License granted herein, Licensee shall enable Licensors and its employees to purchase reasonable quantities of Licensee's products from Licensee at Licensee's then-current lowest wholesale prices (e.g., at the highest-quantity price quoted to Customers, or at special promotional prices quoted to any Customer) or sixty percent (60%) of the lowest retail price being quoted to any customer, whichever is less. Licensee shall also make available fifty (50) units of each SKU (or equivalent) of each Licensed Product each calendar year to Licensors, which Licensors may purchase at Licensee's fully burdened cost of goods sold. In no event shall Licensors re-sell or rent any of the products described in this Paragraph 13.1 at prices higher than paid by Licensors. Licensee shall provide catalogs and price lists for its products to Licensors as they become available to the general trade.

13.2 Other Responsibilities. Licensee shall obtain any and all necessary licenses, approvals and other government authorizations necessary for the Licensed Products, including for their manufacture, sale, distribution, export, use, rental, lease and practice engaged in by Licensee and any of Licensee's Customers. Licensee shall ensure that the Licensed Products are safe and of good and workmanlike quality. Licensee and its Customers shall strictly comply with all applicable laws and regulations concerning Licensed Products, their manufacture, rental, lease, sale, shipment, export, etc., including but not limited to strict compliance with the Export Control Act of 1979.

13.3 Attorneys' Fees. In the event of any arbitration or litigation between the Parties, the prevailing Party shall be entitled to recover from the non-prevailing Party any and all costs, including reasonable attorneys' fees, incurred by the prevailing Party. Such relief shall be in addition to any other relief, award or damages to which the prevailing Party may be entitled. The court or arbitrators shall determine the prevailing party for the purpose of this Paragraph.

13.4 Injunctive Relief. Licensee and Licensors have determined that in the event of a breach or a threatened breach of this Agreement, the non-breaching party will suffer permanent and irreparable damage. Accordingly, Licensee and Licensors agree that in the event of a breach or threatened breach of

this Agreement by the other party, the non-breaching party shall be entitled to preliminary and permanent injunctive relief.

13.5 Severability. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions(s) had never been contained herein; provided that such invalid, illegal or unenforceable provisions shall first be curtailed, limited or eliminated to the extent necessary to remove such invalidity, illegality or unenforceability with respect to the applicable law as it shall then be applied.

13.6 Governing Law and Forum. This Agreement shall be governed, construed and enforced exclusively in accordance with the laws of the State of Utah and the laws of the United States of America. Any arbitration or litigation between the Parties shall be conducted exclusively in Salt Lake City, Utah, U.S.A. and the Parties hereby submit to such exclusive jurisdiction and venue, and agree that such jurisdiction and venue are proper.

13.7 Final Agreement. This Agreement constitutes the final and complete agreement between the Parties concerning the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, written or oral (including prior drafts of this Agreement), between the Parties with respect thereto. No Party shall be bound by any condition, definition, representation, or warranty, other than as expressly set forth herein. Any modification, revision or amendment of this Agreement shall not be effective unless made in a writing executed by both of the Parties. The Licenses granted under this Agreement supercede the licenses granted in the Agreement between RK Industries and Licensor dated 31 May 2000 (the "RK Agreement"), and Licensee agrees to satisfy any financial obligations existing under the RK Agreement as of the Effective Date of this Agreement, at which time the licenses granted in the RK Agreement shall be terminated.

13.8 Time is of the Essence. Time is of the essence in the performance of all obligations under this Agreement.

13.9 Waiver. Any waiver of, or promise not to enforce, any right under this Agreement shall not be enforceable unless evidenced by a writing signed by the Party making such waiver or promise.

13.10 Headings. The headings in this Agreement are for the purpose of convenience only and shall not limit, enlarge or affect any of the covenants, terms, conditions or provisions of this Agreement.

13.11 Language. The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

13.12 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be sent by registered or certified mail, return receipt requested, or by commercial courier, with a required copy by facsimile transmission to the Parties at the addresses set forth above on page 1 of this Agreement, or to such other person and place as either Party shall designate by notice to the other Party. The party sending notice shall obtain confirmation that all facsimile transmissions were sent to the facsimile telephone number set forth above on page 1 of this Agreement or such other facsimile telephone number as either Party shall designate by notice to the other Party, or, in the event

that facsimile transmission is impossible due to problems on the receiving end, that attempts were made.

13.13 Assignments. Licensors has specifically chosen Licensee to commercialize Gelastic, Intelli-Gel and Adjustable Shape Pillow in the Field of Use because of Licensors belief in Licensee's technical abilities, managerial efficiency, marketing expertise and high standards of business ethics. Accordingly, Licensee shall not, and Licensee has neither the right nor the power to, assign the License or this Agreement to any other person or entity without the advance written consent of Licensors. In the event that Licensee merges with any other entity, changes its name, or otherwise transforms into a new entity, this Agreement shall be deemed binding upon and enforceable against such new or other entity. Licensors may, at its sole option, assign its rights or obligations hereunder, provided that any third party beneficiaries or third party delegates agree in writing that each such assignment to which the third party beneficiaries or third party delegates are parties is subject to the applicable terms and conditions of this Agreement.

13.14 Relationship. Neither Party is or shall be a partner, joint venturer, agent or representative of the other Party.

13.15 Insolvency and Receivership. If (i) Licensee becomes insolvent for any reason, (ii) a receiver is appointed for Licensee, (iii) Licensee files a petition for bankruptcy, or (iv) an involuntary petition for bankruptcy is filed for Licensee, then this Agreement shall be deemed executory and the License shall be deemed terminated. Licensors shall then be free to license the Technology Rights and the Trademark Rights to any other party on either an exclusive or nonexclusive basis, or to otherwise exploit the Technology Rights and the Trademark Rights, at Licensors sole discretion.

13.16 Asset Purchase. Within five (5) days of Licensee receiving fifty percent (50%) of the funding toward its anticipated second round investment of five hundred thousand dollars (\$500,000.00), Licensee shall pay Licensors in cash for the following assets, the purchase prices being set forth below. Prior to achieving fifty percent (two hundred fifty thousand dollars [\$250,000.00]) of the second round investment, Licensee shall pay Licensors in cash for any of the items below consumed by Licensee, due when the applicable item is removed from Licensors control or facility or subcontractor.

- a. All bladder material inventory remaining at Dielectrics, relating to the bladders for Adjustable Shape Pillows, the purchase price per unit for each type of material or each type of part being the same as prior paid to Dielectrics for the material or parts by Licensors.
- b. Bladder welding tool used by Dielectrics to make bladders for the Adjustable Shape Pillow. The purchase price shall be eight thousand five hundred (\$8,500.00), the same amount paid by Licensors to Dielectrics to have this tool made. Licensors shall not charge Licensee for the engineering hours and other time involved in creating this tool, and in exchange Licensors reserves the permanent right to have Dielectrics use this tool at no cost to Licensors to make bladders for Licensors' use in pillows which are not Licensed Products.
- c. All inventory owned by Licensors reasonably deemed usable by Licensors for the manufacture of Intelli-Gel-containing Adjustable Shape Pillows in accordance with Licensors' design for such pillows as of the Effective Date of this Agreement. The purchase price shall be the amounts paid by Licensors for this inventory.
- d. All of Licensors' rights to a video produced for Licensors by Alan Neves relating to Intelli-

Gel-containing Adjustable Shape Pillows. The purchase price shall be three thousand dollars (\$3,000.00), and Licensors agree that upon receipt it shall promptly satisfy an obligation to Alan Neves in the same amount for his work in producing the video.

13.17 Use of Facilities, Equipment and Tooling. In the event that Licensee desires to use Licensors' facility, equipment, and tooling, Licensee may do so only on a non-interference basis, which basis shall be at the sole discretion of Licensors. Licensee shall pay Licensors forty eight dollars (\$48.00) per scheduled hour, plus seventy five cents (\$0.75) per part if Licensors' tooling is used. Licensors may elect to change these rates with thirty (30) days notice. Prior to such use of Licensors' facility, Licensee shall obtain reasonable insurance for such operations which specifically names Licensors as beneficiary and which indemnifies EdiZONE against liabilities incurred during Licensee's operations.

13.18 Licensee Manufacturing. On or before October 1, 2002, Licensee shall have in operation a manufacturing capability, either in their own facility or by subcontracting with a manufacturer approved by Licensors, from which one-piece Intelli-Gel for queen-size mattresses can be made, and from which Intelli-Gel for pillows can be made. Licensee shall make reasonable efforts to have the capability for one-piece queen mattress Intelli-Gel in place prior to the ISPA show in March of 2002 (the "ISPA Show"). Toward that end, Licensee agrees that promptly after the Effective Date of this Agreement, Licensee shall travel to Wah Shing in China and investigate the possibility of manufacturing Intelli-Gel at Wah Shing. Licensors shall, at the request of Licensee, accompany Licensee to Wah Shing, in which case Licensors shall not charge hourly charges but shall be promptly reimbursed for any travel expenses. In the event Licensee sets up its own facility or owns its own tooling, Licensee agrees to sell, or allow the manufacturer using its tooling to sell, pillow and mattress Intelli-Gel components to Licensors or its third party licensees for sales outside the Geographic Region for a reasonable price which shall not exceed twenty percent (20%) above total burdened cost with overhead. For example, if Pacific Wave desires to purchase futon parts made in Licensee's pillow molds, Licensee will willingly accommodate their reasonable requests. In the event that Licensee has its own facility, Licensors or its third party licensees may supply tooling compatible with Licensee's facility and equipment and in such event the foregoing twenty percent (20%) shall be limited to fifteen percent (15%). Licensee's obligation under this paragraph to Licensors or its third party licensees shall be on a reasonable non-interference basis with Licensee's own production needs.

13.19 ISPA Show. Licensee shall reimburse Licensors for Licensors' deposit on an exhibit space at the ISPA Show. Licensee shall exhibit in that space during the ISPA Show, featuring an opportunity for mattress manufacturers in the Geographic Region to begin manufacturing Intelli-Gel mattresses under the control of Licensee. At Licensors' sole option, Licensors may attend the ISPA Show to address inquiries by prospective Licensee's which conduct business outside the Geographic Region. This reimbursement shall be due concurrently with the payment of Paragraph 13.16.

13.20 Diligent Marketing. As a material requirement of this Agreement, Licensee shall be continually diligent in its manufacturing, marketing, and selling of Licensed Products in each of its three forms: Mattress overlays, mattresses, and pillows. In the event of non-diligence in any one of these three forms, Licensors may terminate the License for that form only, which shall eliminate the requirement for the Minimum Royalty for that form only.

13.21 Execution and Effective Date. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. The individuals signing below represent that they are duly authorized to

do so by and on behalf of the Party for whom they are signing. When this Agreement has been executed by the duly authorized representatives of the Parties, it shall be effective as of the date of the last execution, and the Party performing such last execution shall insert the date of such last execution on the first page of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this License Agreement to be duly executed and entered into as of the date first above written.

LICENSEE: By (signature): Robert K Rasmussen
Name (print): Robert K Rasmussen
Title: President

LICENSOR: By (signature): Tony Pearce
Name (print): Tony M. Pearce
Title: Manager

RK Industries: By (signature): Robert K Rasmussen
Name (print): Robert K Rasmussen
Title: Manager